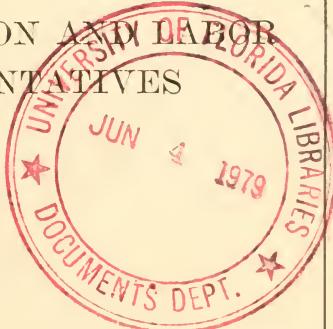


94th Congress }  
2d Session }

COMMITTEE PRINT

INTERIM REPORT OF ACTIVITIES  
OF THE  
PENSION TASK FORCE  
OF THE  
SUBCOMMITTEE ON LABOR STANDARDS

COMMITTEE ON EDUCATION AND LABOR  
HOUSE OF REPRESENTATIVES



MARCH 31, 1976

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CARL D. PERKINS, *Chairman*

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HOUSE OF REPRESENTATIVES,  
COMMITTEE ON EDUCATION AND LABOR,  
SUBCOMMITTEE ON LABOR STANDARDS PENSION TASK FORCE.

Washington D.C., March 31, 1976.

Hon. CARL D. PERKINS,

*Chairman, Committee on Education and Labor,  
Rayburn House Office Building,  
Washington, D.C.*

DEAR MR. CHAIRMAN: The Subcommittee on Labor Standards met on March 31, 1976 and, a quorum being present, unanimously adopted the attached report. On behalf of the subcommittee, I request that this report be printed and made available to the members of the committee. It is clear that further investigation is necessary to fully examine public employee retirement systems.

This report provides the accurate overview of these plans and will serve as the basis for our future studies and abstracts.

With kindest personal regards, I am

Sincerely yours,



*Chairman.*

## INTRODUCTION

Pursuant to the directive contained in H. Res. 257, your Subcommittee has undertaken a study of public employee benefit systems to determine their current status and make recommendations with respect to the necessity for and desirability of legislating Federal standards for their operation. In discharging this responsibility the Subcommittee has directed the staff of the Pension Study Task Force to compile a statistical overview of the universe of public employee plans and prepare an in-depth analysis of selected plans. This interim report contains our initial findings in the nature of an overview of all public plans and detailed analysis of plans in Illinois, New York and Hawaii.

In addition to these staff activities your Subcommittee conducted an extended series of investigative hearings during the course of which more than 39 individuals and organizations testified. These hearings utilized H.R. 9155, a bill to extend all of the Titles I and IV standards of Public Law 93-406 (ERISA) to nonfederal plans, as a vehicle for focusing attention on the specific implications of legislated Federal standards.

During the course of these hearings the general characteristics of State and municipal retirement systems were thoroughly documented. Although governmental and private plans are in many respects similar, from this record it is clear that public employee systems are distinguishable from private plans on a variety of points. Aside from the obvious differences attributable to the direct involvement of these plans in the process of local government, other less obvious but equally important distinguishing features are prevalent.

Our hearings indicate that among the most significant differences between private and public plans is the impact of the Internal Revenue Code on the operation of the plans. Public plans proceed through the qualification process only in rare instances, and hence the participation, nondiscrimination, and other safeguards attained through the qualification mechanism are not present; nor is there any other significant Federal law regulating public plans.

As a result, public plans in general do not appear to be operated within the general financial and accounting parameters established by custom and practice in the private retirement plan field. The absence of any external independent review has perpetuated a level of employer control and attendant potential for abuse unknown in the private sector. Numerous instances of the use of plan assets to finance the operations of the governmental units sponsoring the plan were entered into the hearing record. In at least one instance the evidence is clear that the plan purchased indebtedness which was unmarketable because of the perilous financial circumstances of the issuer. It has never been the policy of this Subcommittee to attempt to draw conclusions with respect to the merits of specific cases or individual actions. We have

always attempted to maintain a broad perspective and avoid a too easy recourse to the use of "horror stories" to buttress legislative findings.

However, it is all too apparent that much of what is contained herein applies to the recent events which have befallen the public employee retirement systems of New York City and New York State. In light of the widespread publicity given those events, we think it advisable to break with tradition and make specific reference to that specific case in the context of this report. We are not prepared to approve or disapprove the action which has resulted in a diversion of a substantial part of the assets of these plans to meet the fiscal crises being experienced by the State and city. We are concerned about the implication of these transfers with respect to the continued ability of the plans to meet their obligations. While a fiscal crisis has been temporarily averted, the solvency of the plans has been impaired and the participants and pensioners are dependent on the uncertain fiscal position of the State and city. Borrowing from their pension plans was not a solution invented in New York but unfortunately is a practice with a substantial history in the history of State and local governments. As a matter of general policy we are convinced that such transfers from retirement programs to finance local governmental operations unduly impair the stability of the plans, substantially increase the cost of providing retirement benefits to the sponsoring employers, and reflect an absence of budgetary discipline on the part of those employers. Additionally, whatever advantages might inure to an investor in tax-exempt State or municipal securities are in general absent in the case of retirement plans which themselves are tax exempt entities. In general, holdings in tax free "municipals" are not the preferred investment medium for retirement plans unless the rate of return is competitive with the rates available on "taxable" investments. Where those rates are competitive, i.e. higher than is normal for "municipal bonds," that very often is a reflection of poor credit on the part of the issuer.

Another distinguishing characteristic of governmental pension plans is the unclear legal status of the participants' rights in such plans under state law. Our hearings and studies indicate that the exact nature of the participants' entitlement—contractual, gratuitous, and so on, is seldom made clear in the various governmental plans. Further, these interests in the plans are frequently subject to various ambiguous and conflicting statutory and constitutional provisions, often compounded by confusing State court interpretations of these provisions. This legal uncertainty also has been shown to involve other elements of the public plan system, particularly in the areas of (1) standards which plan officials must meet in their conduct, and (2) remedies which are available to aggrieved participants and beneficiaries.

The absence of any substantive Federal regulation of public plans because of (1) the absence to date of any significant Internal Revenue Service or other Federal oversight, and (2) the unclear legal status of various elements of public plans under State law, has produced a number of seriously deficient practices in the administration of governmental pension plans.

Our efforts to date indicate that some of the most serious deficiencies exist in the reporting and fiduciary responsibility areas. Accounting methods in public plans frequently fall far short of the rigorous

standards required of plans in the private sector and of important enterprises generally. Actuarial evaluations often fail to meet the high level of professionalism and competence that private retirement systems demand. Both of these important shortcomings are reflections of a larger problem which underlies much of the public employee retirement systems; namely, a high level of employer control of the plan and its assets, with an attendant potential for abuse unknown in the private sector.



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## CHARACTERISTICS AND OPERATIONS OF PUBLIC EMPLOYEE RETIREMENT SYSTEMS

The programs making up the public employee retirement system (PERS) have been found to be as varied as the pension plans which make up the private pension system. In 1975 over 6,141 federal, state, and local government retirement systems were identified as covering 15.3 million civilian and military employees. In addition to the 6,141 plans are other arrangements made by sponsoring governments to provide retirement income for their employees. These programs include deferred compensation contracts, salary reduction plans, and "tax sheltered" annuities. According to the Institute of Life Insurance, 750,000 individuals were covered and 20,000 persons were receiving benefits in 1974 under 403(b) tax sheltered annuity plans. It is believed that at least a majority of the 750,000 persons covered under such plans were public school teachers and other public employees. The Employee Retirement Income Security Act of 1974 established another type of tax deferred pension plan, the Individual Retirement Account and the Individual Retirement Annuity (IRA), which was available for the first time in 1975 to all employees working in the public as well as the private sectors who were not covered under any other public or private pension plan. It remains to be seen to what extent pension coverage will be expanded through the use of IRA's by the 1.5 to 2 million public employees not presently covered under any PERS.

### NUMBER AND MEMBERSHIP

The preliminary findings of the Pension Task Force (the final and more detailed results will be published later in a separate report) as to the total number and membership of the PERS are shown in Table I. In 1975, 6,076 pension plans of one type or another were identified as being maintained by state and local governments for about 10.3 million full- and part-time workers. Another 2.4 million persons were receiving retirement, disability, or survivors benefits under such plans or were otherwise eligible to receive benefits at a later date. While data on membership was not sought (or was unavailable) for about 19.5% of all plans, the understatement of total membership is believed to be less than  $\frac{1}{2}$  of 1% (see Table II, footnote 3). It might be noted that the preliminary totals do not include the Firemen's Relief Association noncontributory plans currently being maintained by 62 Kansas cities (for which membership data was not readily available).

In 1975, the federal government, including its agencies and instrumentalities, maintained 65 employee pension plans, the largest ones being the Military Retirement System (2.1 million active members) and the Civil Service Retirement System (2.7 million active members). The remaining 63 systems have about 161,000 active members or about

5.6% of the total active membership in all federal plans. The roughly 2.7 million persons presently receiving or expecting to receive benefits under all 65 federal systems represent 53% of the total federal active membership. By way of contrast, the corresponding inactive to active membership ratio for all state and local government PERS is 23%.

The number of PERS by size of active membership is shown in Table II. One striking similarity with the private pension system is the large percentage, nearly 80%, of all PERS with fewer than 100 active members. At the other extreme are the 131 plans with 10,000 or more active members. While making up only 2.3% of the total plans, these plans, when the final results become available, are expected to cover approximately 85% of the active membership in all state and local government pension plans.

#### DEFINED BENEFIT OR DEFINED CONTRIBUTION

Among the 6,141 retirement systems are defined contribution plans as well as the more typical defined benefit or benefit "formula" plans. The largest number of similar defined contribution plans are the 314 plans maintained by cities and counties for their highly mobile managers and administrators. These plans are administered by the ICMA Retirement Corporation. Since the breakdown of members by employer was not available, the data on these plans was excluded from Tables II through IV. At the end of 1974, 605 employees participated in the 314 plans. The next largest group of similar defined contribution plans are those maintained by institutions of higher education for faculty and other personnel. In 1975, 289 such plans were in operation (see Table III) and all the plans were funded through Teachers Insurance and Annuity Association of America-College Retirement Equities Fund (TIAA-CREF). In addition to the above, public employees also belong to a small number of defined contribution plans most of which are insured and of the money-purchase type.

#### CONTRIBUTORY OR NONCONTRIBUTORY

Over 75% of all PERS (see Table II) require employees to make contributions (or did require such contributions prior to the time the plans were closed to new members). About 23.5% of all systems do not mandate that employee contributions be made to help finance the systems. In a small number of systems, 1.1% of the total, some employees are required to make contributions and some are not so required. Included in the contributory category are 23 systems which are supplemental to another more basic PERS. Several universities maintain supplementary systems which are of the noncontributory pay-as-you-go type. Over 4% of the systems were identified as being closed to new members which is a direct consequence of the discernible trend toward the consolidation and merger of smaller systems into larger public retirement systems.

#### COVERAGE CATEGORIES AND PLANS BY JURISDICTION

About 75% of all state and local government retirement systems are to be found in the 10 states with the largest number of plans (see Table IV). With 1,414 plans, Pennsylvania alone has nearly 25% of the total

number of all systems. Among the top five states and following Pennsylvania in order are Minnesota (638 plans), Illinois (465 plans), Oklahoma (435 plans), and Colorado (343 plans). By way of contrast to the decentralized nature of the systems to be found in the majority of states is the single statewide plan in Hawaii covering all public employees in that state. While the states with the smallest populations tend to have the least number of plans, this is not entirely the case. It is obvious that New Mexico (with 4 plans), Ohio (with 7 plans) and Oregon (with 9 plans) have achieved major gains in bringing all public employees in their respective states under a small manageable number of systems.

Pension plans covering every imaginable description of public employment are to be found at all governmental and quasi-governmental levels. In size, they range from the 417,000 member New York State Employees' Retirement System, which is the largest system at the state and local level, to the Evergreen Park Illinois Firemen's Pension Fund, which at the time the census was taken did not have any active members. The Washington Metropolitan Area Transit Authority (better known as METRO) was found to be a "body corporate and politic" and its unique 1,000 member system is included in the "special district" category (52) as shown in Table III. Some other systems which cover unique categories of workers are the Central Intelligence Agency Employees Voluntary Investment Program, the TIAA-CREF Retirement Plan for Faculty Members of the Uniformed Service University of the Health Sciences, the Waterford (California) Irrigation District Pension Plan, the Dekalb County Alabama Hospital Annuity and Benefit Plan, the Salt River Project Agricultural Improvement Power District Retirement Plan (Arizona), and the State of South Dakota Cement Plant Pension Plan.

Generally, public employee retirement systems may be categorized by level of administration as being at the federal, state, city, county, township (borrough), or special district level. As shown in Table III, over 80% of the plans are administered at the city and township levels, while the federal and state governments administer 10.7% of the total plans. Plans covering either policemen or firemen exclusively make up 66.1% of all plans. While 68 plans have been categorized as being "teacher plans," teachers in 21 states participate in a statewide system covering state employees as well as teachers.

#### SOCIAL SECURITY COVERAGE

While data on Social Security coverage in 1975 for both full-time and less than full-time public employment will not be available until the Pension Task Force survey has been completed, Table V does display limited data obtained from the Census of Governments for October 1972. Approximately 67% of the 8.6 million state and local government employees working full-time in October of 1972 were covered by the federal Old Age, Survivors, Disability, and Health Insurance program (OASDHI). Approximately 89% of the full-time employees were also covered under a public employee pension plan of one type or another.

While comparable figures for part-time public employment are not available, it is believed that approximately two-thirds of such workers

are also covered under OASDIII and that only about 30-40% are also covered under a public employee retirement system.

#### BENEFITS AND FINANCES

The most comprehensive data available on the operations of state and local employee retirement systems is summarized in Tables VI and VII. The figures shown are based principally on the 1972 Census of Governments and annual updates made by the Bureau of the Census. The figures do not represent the PERS universe, since by design the Bureau of the Census does not obtain data on insured plans or on non-contributory plans (with several exceptions).

In 1974, the assets of the PERS had reached at least \$93.9 billion, and nearly 1.7 million persons were receiving benefits amounting to \$6.3 billion. In terms of active membership and the number of persons receiving benefits, the public employee retirement system can be seen to be about one-fourth the size of the private pension system. In contrast, the PERS has accumulated assets at book value equal to about 45-48% of the private pension system holdings.

While the PERS membership has been expanding annually at 5-6%, the system finances have recently been expanding at double or triple that rate. Total benefit payments have been increasing at approximately 18% annually while contributions have increased at half that rate. Total assets have also increased rapidly, but the rate of increase has lagged behind that for benefit payments by 4 to 5%. As a consequence of these rate disparities, the ratio of assets to benefit payments has shown a decline over recent years from a value of 20 in 1970 to a ratio of 16.7 in 1974. The unfavorable trend in this simple measure of funding status certainly warrants continued close study.

#### SOURCES OF DATA

The figures presented in Tables I through IV are based on an extensive data collection effort engaged in by the Pension Task Force in order to identify the universe of public employee retirement systems. The initial and most comprehensive source used was the listing of state and local public employee retirement systems prepared by the Bureau of the Census for the 1972 Census of Governments survey. Information was also collected by mail survey, telephone canvassing, and from a multitude of individuals and organizations at the state and national levels. Without the willing cooperation of these many individuals and organizations such an extensive data collection effort would have been impossible.

The 6,141 plan figure shown in Table I does not finalize by any means the total number of public employee retirement systems. It is possible that this figure may yet reflect as much as a 10 or 15% under-reporting of the total number of plans. For example, in Pennsylvania,

Texas, and West Virginia, numerous jurisdictions that were queried have yet to respond. Since care was taken to obtain data from the largest jurisdictions in each state, it is extremely doubtful that in terms of active membership the under-reporting will be found to exceed 75,000 members for the entire United States.

As has been stated previously, the figures shown in Tables V through VII do not reflect the totals for the entire universe of state and local government employee retirement systems. While the Census of Government figures are based only on about 40% of the total plans, there are early indications that the Census figures may underestimate the membership and finances of the entire universe of plans by less than 10%.

#### SUMMARY

The bulk of the plans making up the public employee retirement system in the United States has been identified and categorized (many for the first time). The distribution of plans by state is characterized mainly by its distinct lack of uniformity or regular pattern. The approaches seem to range from what can only be described as non-approaches resulting in a proliferation and patchwork of plans to what appear to be deliberate attempts to achieve a level of comparative simplicity.

While the retirement systems are varied and many in number, their influence as a whole is vast. Over 5 million persons already depend on 6,141 systems to help meet their retirement income needs. Another 15.3 million active employees have expectations of receiving benefits from these systems in the future. The assets of the state and local government systems alone have in all likelihood already passed the \$100 billion mark. The investment of these enormous and fast growing sums of money will continue to have an important effect on the securities markets in the United States.

Many additional questions as to the nature of public employee retirement systems need to be answered. The Pension Task Force studies now in progress will be instrumental in gathering the needed facts about public pension investments, funding, and benefit structures. The results of these studies will be published in separate reports as the information becomes available.

TABLE I.—NUMBER AND MEMBERSHIP OF FEDERAL, STATE, AND LOCAL PUBLIC EMPLOYEE RETIREMENT SYSTEMS (PRELIMINARY), 1975

Level of government	Number of plans	Membership (thousands)		
		Active	Inactive <sup>1</sup>	Total
State and local	6,076	10,268	2,374	12,642
Federal (military)	1	2,151	1,102	3,253
Federal (nonmilitary)	64	2,883	1,570	4,453
Total	6,141	15,302	5,046	20,348

<sup>1</sup> "Inactives" include all persons receiving benefits as well as former employees who have acquired a vested right to receive retirement benefits at a subsequent time.

TABLE II.—NUMBER OF FEDERAL, STATE, AND LOCAL PUBLIC EMPLOYEE RETIREMENT SYSTEMS BY TYPE AND SIZE (PRELIMINARY), 1975

	Number of plans <sup>1</sup>	Percentage of total
<b>Type of plan:</b>		
Wholly contributory	4,157	71.3
Wholly noncontributory	1,368	23.5
Partially contributory (some members make contributions and others do not)	64	1.1
Closed plan (no new members are admitted)	238	4.1
Total	25,827	100.0
<b>Size of active membership:</b>		
0 to 4	800	13.8
5 to 24	1,535	26.4
25 to 99	1,104	19.0
100 to 199	330	5.7
200 to 499	303	5.2
500 to 999	192	3.3
1,000 to 4,999	215	3.7
5,000 to 9,999	65	1.1
10,000 and over	131	2.3
Unknown	21,138	19.5
Total	25,813	100.0

<sup>1</sup> Total number of plans exclude 314 plans for which data by type of plan and size of membership is unavailable.

<sup>2</sup> The active membership was combined for reporting purposes for the 14 plans of the Federal home loan banks.

<sup>3</sup> The plans for which active membership is unknown are principally local plans for policemen and firemen having fewer than 100 active members.

TABLE III.—PUBLIC EMPLOYEE RETIREMENT SYSTEMS OF FEDERAL, STATE, AND LOCAL GOVERNMENTS BY TYPE OF ADMINISTERING GOVERNMENT (PRELIMINARY), 1975

Level of administration	Number of plans. <sup>1</sup>	Percent
STATEWIDE AND FEDERAL PLANS		
1 State or Federal employees only	54	8.7
2 State employees plus local government employees (including teachers)	43	6.9
3 Policemen only	32	5.1
4 Firemen only	13	2.1
5 Policemen and firemen only	8	1.3
6 Teachers	35	5.6
7 Legislators	8	1.3
8 Judges	47	7.6
9 Local government employees (excluding teachers)	22	3.5
10 Local government employees (including teachers)	0	0
11 Faculty and others (TIAA-CREF only)	289	46.5
12 Faculty and others (other than TIAA-CREF)	20	3.2
13 All other statewide and Federal plans	51	8.2
Total (10.7 percent of all plans)	622	100.0
CITY PLANS		
21 City employees only (excluding teachers)	445	12.9
22 City employees only (including teachers)	5	.1
23 Policemen only	940	27.3
24 Firemen only	1,710	49.7
25 Policemen and firemen only	276	8.0
26 Teachers	23	.7
27 Judges	2	.1
28 All other city administered plans	40	1.2
Total (59.1 percent of all plans)	3,441	100.0
COUNTY PLANS		
31 County employees only (excluding teachers)	181	67.6
32 County employees only (including teachers)	3	1.1
33 Policemen only	29	10.8
34 Firemen only	22	8.2
35 Policemen and firemen only	3	1.1
36 Teachers	7	2.6
37 Judges	4	1.5
38 All other county administered plans	19	7.1
Total (4.6 percent of all plans)	268	100.0
TOWNSHIP PLANS		
41 Township employees only (excluding teachers)	472	36.1
42 Policemen only	772	59.1
43 Firemen only	34	2.6
44 Policemen and firemen only	9	.7
45 All other township administered plans	19	1.5
Total (22.4 percent of all plans)	1,306	100.0
SPECIAL DISTRICT AND OTHER PLANS		
51 Teachers	3	1.6
52 All other (e.g., transit authorities)	187	98.4
Total (3.2 percent of all plans)	190	100.0
ALL PLANS		
Faculty and others (11)+(12)	309	5.3
Police (3)+(23)+(33)+(42)	1,773	30.5
Fire (4)+(24)+(34)+(43)	1,779	30.5
Police and fire (5)+(25)+(35)+(44)	296	5.1
Teacher (6)+(26)+(36)+(51)	68	1.2
Legislators (7)	8	.1
Judges (8)+(27)+(37)	53	.9
Federal and State (1)+(2)+(13)	148	2.5
Local (9)+(10)+(21)+(22)+(28)+(31)+(32)+(38)+(41)+(45)	1,206	20.7
Other (52)	187	3.2
Total Federal, State, and local government plans	5,827	100.0

<sup>1</sup> Total number of plans excludes 314 plans for which data by level of administration is unavailable.

TABLE IV

Number of Federal, State, and local public employee retirement systems by State or other jurisdiction (preliminary), 1975

<i>State or jurisdiction:</i>	<i>Number of plans<sup>1</sup></i>	<i>State or jurisdiction—Con.</i>	<i>Number of plans<sup>1</sup></i>
(1) Alabama -----	47	(31) New Jersey-----	39
(2) Alaska -----	8	(32) New Mexico-----	4
(3) Arizona -----	10	(33) New York-----	117
(4) Arkansas -----	69	(34) North Carolina-----	58
(5) California -----	72	(35) North Dakota-----	21
(6) Colorado -----	343	(36) Ohio -----	7
(7) Connecticut -----	165	(37) Oklahoma -----	435
(8) Delaware -----	13	(38) Oregon -----	9
(9) District of Columbia-----	7	(39) Pennsylvania -----	1,414
(10) Florida -----	336	(40) Rhode Island-----	22
(11) Georgia -----	54	(41) South Carolina-----	13
(12) Hawaii -----	1	(42) South Dakota-----	7
(13) Idaho -----	11	(43) Tennessee -----	27
(14) Illinois -----	465	(44) Texas -----	95
(15) Indiana -----	249	(45) Utah -----	12
(16) Iowa -----	75	(46) Vermont -----	31
(17) Kansas -----	55	(47) Virginia -----	28
(18) Kentucky -----	49	(48) Washington -----	53
(19) Louisiana -----	62	(49) West Virginia-----	69
(20) Maine -----	7	(50) Wisconsin-----	46
(21) Maryland -----	39	(51) Wyoming -----	9
(22) Massachusetts -----	103	(52) Puerto Rico-----	5
(23) Michigan -----	187	(53) Virgin Islands-----	1
(24) Minnesota -----	638	(54) Guam -----	1
(25) Mississippi -----	23	(55) Washington Metropolitan Area Transit Authority -----	1
(26) Missouri -----	51	(56) Federal -----	65
(27) Montana -----	28	Total -----	5,827
(28) Nebraska -----	52		
(29) Nevada -----	10		
(30) New Hampshire-----	9		

<sup>1</sup> Total number of plans exclude 314 plans for which data by state is unavailable.

TABLE V.—COVERAGE OF STATE AND LOCAL GOVERNMENT EMPLOYEES UNDER SOCIAL SECURITY AND PUBLIC EMPLOYEE RETIREMENT SYSTEMS, 1972

Level of government	Number of governmental units	Coverage of full-time State and local government employees <sup>1</sup> (thousands)											
		Without pension <sup>2</sup> (6)+(7)						Total social security plus pension <sup>3</sup> (7)+(9)					
		Without social security or pension	Social security only	Social security plus pension	Social security plus pension	Pension only (non-insured)	Pension only (non-insured)	Number of uninsured known	Number of uninsured known	Pension only (non-insured)	Pension only (non-insured)	Number of uninsured known	Total pension coverage <sup>4</sup> (9)+(11)+(12)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
Local government:													
Counties	3,064	165	1,177	192	1,319	35	122	157	18	523	645	74	177
Municipalities	18,517	1,818	1,920	455	2,376	54	171	226	15	766	937	61	535
Townships	16,591	119	191	157	348	4	13	17	20	32	45	54	33
School districts	15,781	16	2,710	877	3,587	16	65	81	14	325	390	67	178
Special districts	23,885	10	268	60	327	10	63	73	32	124	187	81	27
Other than teachers													
Teachers		2,106	3,812	(1)	(1)	119	434	554	17	1,770	2,205	67	950
		22	2,454	(1)	(1)	26	104	130	7	905	1,009	52	890
Total local government	78,218	2,128	6,266	1,741	8,007	145	539	684	13	2,675	3,214	61	1,840
State government:													
Other than teachers		140	2,046	(1)	(1)	33	97	130	7	1,426	1,523	80	341
Teachers	- <sup>2</sup>	36	2,266	(1)	(1)	6	15	21	8	196	211	84	34
Total State government	50	176	2,312	644	2,957	39	112	151	7	1,622	1,734	80	378
Total State and local government:													
Other than teachers		2,246	5,858	(1)	(1)	152	532	684	13	3,196	3,728	71	1,294
Teachers	- <sup>2</sup>	58	2,720	(1)	(1)	32	119	151	7	1,101	1,220	56	924
Grand total	78,298	2,304	8,578	2,385	10,904	184	651	835	11	4,297	4,948	67	2,218

<sup>1</sup> Not available.  
<sup>2</sup> Each of the 50 States has a statewide system to which teachers belong—36 are teacher systems and 14 are statewide systems covering teachers and other public employees.  
<sup>3</sup> Plan and coverage data is reported mainly for contributory plans and therefore excludes non-contributory plans such as the Delaware State employees pension plan, the New York State Retirement Systems, although noncontributory, are included.

<sup>4</sup> The employment and retirement coverage figures are distributed by level of government and do not reflect on a line item basis the number of employees enrolled in the plans shown in col. (2). In cols. (6) through (14) coverage figures for local government exclude teachers.  
<sup>a</sup> Percentages shown in cols. (8), (10), and (12) are based on the known pension and social security coverage figures; coverage is unknown for 13.7 percent of the full-time public employment.

Source: 1972 Census of Governments (Bureau of the Census).

TABLE VI.—SUMMARY OF OPERATIONS OF CONTRIBUTORY STATE AND LOCAL GOVERNMENT EMPLOYEE RETIREMENT SYSTEMS  
 [Dollar amounts in millions]

Year	Number active participants	Number receiving retired or disability benefits	Total number receiving benefits	Total payments to retired or disability pensions	Total payments to survivors benefits	Contributions				Assets (book value)	
						Employer		Employee			
						Amount	Percent	Amount	Percent		
1950	2,600,000	254,000	40,000	\$294,000	\$274	\$300	56	\$395	44	\$5,154	
1960	4,500,000	530,000	70,000	660,000	940	1,015	1,725	60	40	2,895	
1970	7,300,000	1,171,000	120,000	1,291,000	2,905	3,120	4,920	62	38	7,895	
1971	7,700,000	1,254,000	125,000	1,379,000	3,425	3,955	5,495	63	38	8,775	
1972	8,100,000	1,333,000	130,000	1,463,000	4,085	4,535	6,050	63	37	9,620	
1973	8,500,000	1,415,000	135,000	1,550,000	4,780	5,315	6,600	63	37	10,400	
1974	9,000,000	1,493,000	146,000	1,645,000	5,625	6,250	(1)	(1)	(1)	8,160	
Approximate percentage annual increase	5-6	6	6	18	16	18	10	10	8	9	
Approximate percentage of private pension system levels	25	23-24	-----	40-42	-----	-----	-----	-----	-----	49-50	
										45-48	

<sup>1</sup> Not available.

<sup>2</sup> Estimated.

Sources: Social Security Administration, Institute of Life Insurance, 1972 Census of Governments (Bureau of the Census), SEC.

Note—Governmental employers pay 63 percent of annual pension contributions in contrast to private employers who pay about 90 percent.

TABLE VII.—FINANCES OF CONTRIBUTORY STATE AND LOCAL GOVERNMENT EMPLOYEE RETIREMENT SYSTEMS  
(FISCAL YEARS ENDING IN 1971-72)

[Dollar amounts in millions]

Item	State administered systems (176)	Locally administered systems (2128)	Total (2304)
Receipts	\$9,285	\$3,336	\$12,620
Employee contributions	2,637	763	3,400
Percent	28.4	22.9	26.9
Government contributions	4,026	1,724	5,750
Percent	43.3	51.7	45.6
Earnings on investments	2,621	849	3,470
Percent	28.2	25.4	27.5
Payments	3,279	1,641	4,920
Benefits	2,694	1,427	4,121
Percent	82.2	87.0	83.8
Withdrawals	493	154	647
Percent	15.0	9.4	13.2
Other	92	60	152
Percent	2.8	3.6	3.0
Excess receipts over payments	6,006	1,695	7,701
		1962	1972
Cash and security holdings	51,158	17,602	23,294
Percent in			68,760
Cash and deposits	.8	2.1	1.2
Federal securities	4.4	8.4	26.2
State and local government securities	1.3	9.9	17.4
Nongovernmental securities	93.5	79.6	55.2
Corporate stock	(18.0)	(19.4)	(3.0)
Ratio:			(18.3)
Government contributions to employee contributions	1.5	2.3	1.5
Government contributions to benefit payments	1.5	1.2	1.5
Receipts to benefit and withdrawal payments	2.9	2.1	2.6
Cash and security holdings to benefit payments	19.0	12.3	18.5
Investment earnings as a percent of receipts	28.2	25.4	20.1
			27.5

Source: 1972 Census of Governments (Bureau of the Census).



THE LIBRARY OF CONGRESS,  
CONGRESSIONAL RESEARCH SERVICE,  
Washington, D.C., February 9, 1976.

To: House Committee on Education and Labor, Subcommittee on  
Labor Standards. Pension Task Force  
From: American Law Division.  
Subject: State and Local Pension Plans in Illinois, New York, and  
Hawaii.

Pursuant to your inquiry of July 17, 1975, and our conference and conversations since that date, requesting an analysis of the governmental pension plans of State and local governments in Illinois, New York, and Hawaii, please find enclosed three reports and two summaries. The first report is an analysis of the governmental pension plans covering employees of the State of Illinois and its local governments. The report examines coverage, funding, financing and fiduciary standards. There is also enclosed an analytic summary of this report.

The second report is an analysis of the governmental pension plans covering employees of the State of New York and the City of New York. The report examines coverage, funding, financing and fiduciary standards. There is also enclosed an analytic summary of this report.

The third report is an analysis of the governmental pension plan of the State of Hawaii. This report examines coverage, funding, financing and fiduciary standards.

HOWARD M. ZARITSKY,  
*Legislative Attorney.*

(13)



## GOVERNMENTAL PENSION PLANS OF THE STATE OF ILLINOIS: A SUMMARY AND ANALYSIS

The State of Illinois has codified a comprehensive system of pension plans covering the retirement and death benefits afforded employees of the State government and of various local governments. These plans comprise and are regulated under the Illinois Pension Code (hereinafter, IPC). 108½ Ill. Rev. Stat., as amended to date. Only two pension plans for governmental employees are not included in the IPC: the pension plan of the Chicago Transit Authority (CTA) and the pension plan of the Village of Morton Grove, in Cook County. [There also appear to be three plans of smaller municipalities which will not be discussed in this report because of their lack of sizable participation: the pension plans of Lake Bluff, Wood River, and Sparta Township, Illinois].

This report contains a summary and analysis of the governmental pension plans in the State of Illinois on points of coverage, funding, financing, and fiduciary standards. An in-depth examination of these plans on this basis was contained in a prior report of September 8, 1975, entitled "State and Local Pension Plans for the State of Illinois: Coverage, Funding, Financing, and Fiduciary Standards." References to Report will be to the aforementioned prior report.

### I. COVERAGE

Coverage should, definitionally, contain a number of factors regarding the discussed pension plan. Perhaps the first item for discussion would be whether a given pension plan constitutes a "governmental plan." The Employee Retirement Income Security Act of 1974 (ERISA), P.L. 93-406, 93d Cong., 2d Sess. (1974) provides that a "governmental plan" includes any plan

established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing \* \* \*. Int. Rev. Code of 1954 § 414(d).

The scope of this definition is not entirely clear at this time. There are, to date, no regulations of either the Departments of the Treasury or Labor on this section or its equivalent in the Labor portion of ERISA. See ERISA § 2(32). The following factors, however, may be relevant in weighing the "governmental" qualities of a given pension plan:

1. Establishment by State statutes, local ordinances, or the State constitution—such official establishment tends to make the plan appear governmental;
2. Composition of the body managing the plan—if they are elected or appointed governmental officials, the plan appears more likely "governmental;"

3. Payment of the salaries of covered employees with State or local funds—makes the plan appear more governmental;

4. Rights of covered employees to strike and bargain collectively—are these rights more like government employees or private sector employees;

5. Source of income of the employer (is it from State and local revenues, private activities, or contributions)—if the employer is supported by State or local revenues it appears more governmental;

6. "Police powers," including taxing, held by the employing body—the more of these powers, the more likely it appears that the plan is "governmental;"

7. Compliance of the plan with the requirements for private pension plans under ERISA—if the plan meets the ERISA requirements, substantial as they are to meet, it may be inferred that, perhaps, the unit considers the plan nongovernmental; and

8. Functions performed by the employer—are they "proprietary" or "governmental."

These points should be considered merely factors which may tend to evidence "governmentalness" in a pension plan. They should not be considered conclusive nor should any single factor be thought enough to guaranty "governmental" treatment by the Departments of Labor and Treasury.

With respect to the State of Illinois, the pension plans covering State employees would seem the most sure of "governmental" treatment, since they take the "governmental" side of every one of the nine cited elements. The State regulated plans for local entities, delineated in the Illinois Pension Code, also would appear similarly situated. The pension plan of the Village of Morton Grove, though not statutorily established, otherwise would seem strongly "governmental." The only plan which raises any potential difficulties would seem to be the pension plan of the Chicago Transit Authority.

The CTA's pension plan is statutorily authorized, although not statutorily regulated. The CTA provides mass transportation, a function sometimes performed elsewhere by private enterprise. However, the CTA is an entity created and regulated by statutes of the State of Illinois. While, as stated, a more confident characterization may be made of the governmental character of the other Illinois pension plans than may be made of the CTA's plan, looking at all the elements noted above to determine "governmental" plans, the CTA pension plan would appear more likely to be considered "governmental" than nongovernmental.

The second element which may be examined under "coverage" would be the inclusion of "part-time" personnel within the pension plan. Most of the pension plans for State and local employees in Illinois contain no specific directive in this regard. Their lack of specific statement could be interpreted as permitting anyone otherwise thought "employed," though part-time, to be covered by the plan. Three plans contain specific directives limiting coverage to full-time personnel: the Pension Plan of the Village of Morton Grove, the Laborers' and Retirement Board Employees' Annuity and Benefit Fund (Cities over 500,000 Inhabitants), and the Firemen's Pension

Fund (Municipalities 500,000 and Under). The six pension plans containing specific directives permitting nonfull-time personnel are:

1. State Universities Retirement System—covers “half-time employment.” IPC § 15-107;
2. Teachers’ Retirement System—covers teachers employed on a “permanent and continuous basis in a position in which services are expected to be rendered for at least one school year,” contrasting this with “full-time”, which is also covered. IPC § 16-106;
3. State Employees’ Retirement System—covers those employed at least 900 hours a year. IPC § 14-108;
4. Policemen’s Pension Fund (Municipalities 500,000 and Under)—covers “Part-time policemen.” IPC § 3-109;
5. Sanitary District Employees’ and Trustees’ Annuity and Benefit Fund—covers “temporary” employees. IPC § 13-108;
6. Chicago Transit Authority Pension Plan—covers any employee receiving a “regular and stated compensation.”

## II. FUNDING

Funding, for the purposes of this analysis, means the obligation of the State and local employers and the covered employees, to contribute to the pension trust fund to provide moneys sufficient to pay all benefits required and accrued. There are a number of factors within the examination of funding provisions which would seem to warrant special and independent analysis. These are: (1) the contributory or non-contributory nature of the plan; (2) the percentage of employee contributions to the fund; (3) the use of actuarially computed governmental contribution formulae; (4) the methodology and actuarial assumptions used by the government where actuarial formulae are adopted; (5) the legal basis for the formula, i.e., statutes, constitution, or regulations; and (6) the existence of periodic review of the actuarial procedures adopted.

### *A. Contributory or noncontributory nature of the pension plan*

All governmental pension plans of the State of Illinois are contributory. The pension plan for the Public Libraries Employees, however, does not appear to provide for any contributions by the employer, but seems to be funded entirely from employee contributions. IPC § 19-104. This, however, still would constitute a contributory pension plan since it does require, and in fact makes even more necessary, employee contributions.

### *B. Employee contributions: Salary percentages*

The percentage of salary which employees must contribute for basic pension benefits varies from plan-to-plan within the governmental plans of Illinois. The salary contribution percentages required by the various State and local pension plans in the State of Illinois are:

1. General Assembly Retirement System—7%. IPC § 2-126;
2. State Universities Retirement System— $6\frac{1}{2}\%$ . IPC § 15-157;
3. Teachers’ Retirement System— $6\frac{1}{2}\%$ . IPC § 16-152;
4. Judges’ Retirement System— $7\frac{1}{2}\%$ . IPC § 18-133;
5. State Employees’ Pension Plan— $6\frac{1}{2}\%$  (7% for policepersons and firepersons). IPC § 14-171;
6. Policemen’s Pension Fund (Municipalities 500,000 and Under)— $7\frac{1}{2}\%$ . IPC § 3-125;
7. Firemen’s Pension Fund (Municipalities 500,000 and Under)—5% of salary. IPC § 4-124.

8. Policemen's Annuity and Benefit Fund (Cities over 500,000)—7%. IPC § 5-169;

9. Firemen's Annuity and Benefit Fund (Cities over 500,000)—7½%. IPC § 6-166;

10. Illinois Municipal Retirement Fund—3¾%. IPC § 7-173.

11. Municipal Employees', Officers', and Officials' Annuity and Benefit Fund (Cities over 500,000 Inhabitants)—6½%. IPC § 8-174;

12. County Employees' and Officers' Annuity and Benefit Fund (Counties over 500,000 Inhabitants)—6½%. IPC § 9-177;

13. Forest Preserve District Employees' Annuity and Benefit Fund—6½%. IPC § 10-101;

14. Laborers' and Retirement Board Employees' Annuity and Benefit Fund (Cities over 500,000 Inhabitants)—6½%. IPC § 11-170;

15. Park Employees' and Retirement Board Employees' Annuity and Benefit Fund (Cities over 500,000)—6½%. IPC § 12-150;

16. Sanitary District Employees' and Trustees' Annuity and Benefit Fund—6½%. IPC § 13-170;

17. Public School Teachers' Pension and Retirement Fund (Cities over 500,000 Inhabitants)—6½%. IPC § 17-130;

18. House of Correction Employees' Pension Fund—6%. IPC § 19-101;

19. Public Libraries Employees' Pension Fund—6%. IPC § 19-208(1);

20. Chicago Transit Authority Pension Plan—7%;

21. Village of Morton Grove Pension Plan—2%.

### *C. Type of formula for governmental contributions*

Governmental pension plans in Illinois utilize both the actuarial and non-actuarial methods of computing the governmental contributions. Actuarial methods include, generally, all forms of computation requiring contributions in an amount to meet certain stated needs of the pension plan. Such formulae are usually stated in terms of the necessary costs which must be funded, such as past and present service liabilities, current costs and administrative expenses. Non-actuarial methods, on the other hand, include all other forms of contribution computation formulae, generally requiring a contribution of a number of times or fraction of the contributions of the employees in the current or past years, or determining the contribution by certain taxes which will provide it. The non-actuarial methods may have actuarial bases, in that the formula for contributions, though not stated in actuarial terms, may originally have been determined actuarially. For example, where the pension plan employer is required to contribute 1.5 times the contributions of the employees in the year two years prior to the contribution year, this is not stated actuarially, but may be based on an actuarial computation which showed that this was the required funding level for safe reserves.

Of the governmental pension plans in the State of Illinois, all State plans use actuarial methods of contribution computation. Three local pension plans use this method: the Policemen's Pension Fund (Municipalities 500,000 and Under), the Firemen's Pension Fund (Municipalities 500,000 and Under), and the Pension Plan of the Village of Morton Grove. The formulae used in these plans will be discussed *infra*. Subsection D.

The non-actuarial formulae for basic pension benefits utilized by certain local governmental pension plans in Illinois are:

1. Policemen's Annuity and Benefit Fund (Cities over 500,000)—9 5/7% covered employees' salaries. IPC § 5-169;
2. Firemen's Annuity and Benefit Fund (Cities over 500,000)—8½% covered employees' salaries. IPC § 6-166;
3. Illinois Municipal Retirement Fund—equal to covered employees' contributions. IPC § 7-172;

4. Municipal Employees', Officers', and Officials' Annuity and Benefit Fund (Cities over 500,000 Inhabitants)—6% covered employees' salaries. IPC § 8-174;
5. County Employees' and Officers' Annuity and Benefit Fund (Counties over 500,000)—7% covered employees' salaries. IPC § 9-170;
6. Forest Preserve District Employees' Annuity and Benefit Fund—1.3 times covered employee contributions for the year two years previous. IPC § 10-107;
7. Laborers' and Retirement Board Employees' Annuity and Benefit Fund (Cities over 500,000 Inhabitants)—6% covered employees' salaries. IPC § 11-170;
8. Park Employees' and Retirement Board Employees' Annuity and Benefit Fund (Cities over 500,000)—1.50 times covered employees' contributions. IPC § 12-152;
9. Sanitary District Employees' and Trustees' Annuity and Benefit Fund—6% covered employees' salaries. IPC § 13-170b;
10. Public School Teachers' Pension and Retirement Fund (Cities over 500,000 Inhabitants)—Amount raised by special tax at .202% on all taxable property within the city. IPC § 17-128;
11. House of Correction Employees Pension Plan—Authorized tax up to .0009% on all taxable property within the jurisdiction. Tax is not mandatory, so contributions not mandatory. IPC § 19-103;
12. Chicago Transit Authority—13% covered employees' salaries.

*D. Actuarial methodology and assumptions in governmental contribution computation formulae*

Methodology, for the purpose of this report, means the basic formulae utilized to compute contributions of a governmental employer to a pension plan utilizing actuarial computation methods. The methodology means, generally, the enumerated costs which must be funded.

The methodologies adopted by the various governmental pension plans using actuarial computation of employer contributions are:

1. General Assembly Retirement System—funds to meet “(a) actuarial requirements for such year for annuities in excess of the amounts provided for by accumulated contributions of the individual retired members and the expense of administration, (b) an amount equal to the contributions made by the members towards the automatic increase in retirement annuity, . . . and (c) to create and maintain a reserve at the end of the year of an amount equal to the estimated amount required to pay annuities, refunds, and expenses during the succeeding year.” IPC § 2-124;

2. State Universities Retirement System—funds to meet estimated costs of current annuities, survivors' insurance benefits, costs of administration, and to accumulate assets sufficient to equal the liability for all benefits expected to be paid to then annuitants, their survivors, accumulated additional normal and survivors' insurance contributions of current participants and reasonable reserves. Furthermore, the State must fund the plan sufficiently to amortize acquisition of land and construction of an office building over 30 years, less annual rental income. Minimum funding is an amount required to fully fund current service costs with actuarial reserves as required, plus interest on unfunded liabilities. IPC § 15-155;

3. Teachers' Retirement System—funds to meet “costs for retirement allowances earned by the members during the fiscal year, including regular interest on any State obligations at the beginning of the year for the cost of benefits, retirement allowances and benefits earned in prior years and not previously provided by State contributions.” IPC § 16-158. There is also a minimum non-actuarial contribution requirement of 1.2 times member contributions. IPC § 16-158;

4. Judges' Retirement System—funds to meet “the costs of maintaining this system in accordance with the following method of funding:

The State's contribution applicable to any fiscal year shall be the sum of (1) the amounts estimated to be required on the basis of actuarial tables adopted by the Board . . . for annuities during the year in excess of the accumulated contributions of the judges retired during the year; plus (2) the estimated expenses of administration for the year; or (3) an amount equal to the retirement annuity and widow's annuity contributions of the participants during the year and the estimated amounts required to pay all annuities and expenses for the succeeding year.” IPC § 18-131;

5. State Employees' Pension Plan—funds to meet costs of "maintaining and administering the system on a funded basis in accordance with actuarial reserve requirements." IPC § 14-169. The contributions must be equal to or greater than the annual average of the projected expenditures over the next ten years for the purpose of: (1) State annuity; (2) prior service annuity; (3) the part of reversionary annuity derived from other than accumulated contributions; (4) death benefit except accumulated contributions or any part thereof; (5) survivors' annuity; (6) ordinary disability benefit; (7) accidental disability benefits; (8) accidental death benefit except that part consisting of accumulated contributions; (9) widow's annuity except that part consisting of employee contributions therefor, and (10) administration expenses." IPC § 14-169.

Factors to be considered in computation of annual expenses include probable future retirements, death, interest, and employment turnover. IPC § 14-169.

6. Policemen's Pension Fund (Municipalities 500,000 and Under)—funds to cover "annual requirements of the police pension fund." Reserve established in an amount at least equal to \$10,000 for each covered policeperson. IPC § 3-125:

7. Firemen's Pension Fund (Municipalities 500,000 and Under)—funds to "(1) meet the annual requirements of the pension fund; and (2) provide actuarial reserves for the annuities and benefits to be earned by the firemen during the year, and said actuarial reserve requirements shall be computed at a rate of not less than 17.5% of the salaries and wages to be paid to the firemen for the ensuing year; and (3) provide for the amortization of the unfunded accrued liabilities, including liabilities on account of pensions and benefits in force at such date, as determined as of December 31, 1966, by the Pension Division of the Department of Insurance . . . over a period of 40 years from such date using an interest rate assumption of 4% per annum." IPC § 4-118.

8. Pension Plan of the Village of Morton Grove—funds to keep the plan actuarially solvent, an amount equal to current service costs plus interest on unfunded past service liability.

The actuarial assumptions are those assumptions which must be made in order to compute the contributions under the methodology adopted. Examples of the requisite actuarial assumptions would be assumptions on life expectancy, job turnover, and prospective expansion of the labor force covered by the plan. The actuarial assumptions of the various governmental pension plans are not stated in the statutes delineating the actuarial methodology or adopting an actuarial computation of governmental contributions.

#### *E. Authorization for actuarial formula*

Seven of the eight actuarial formulae used by Illinois governmental pension plans are authorized by statute. Therefore, these seven may only be changed by act of the State legislature. The actuarial formula for the Pension Plan of the Village of Morton Grove, however, is not statutorily delineated and may be changed by the Village in the same manner as any other contract.

#### *F. Review of actuarial determinations*

There is no specific review of actuarial assumptions or methodology provided for in the Illinois Pension Code or in the Pension Plan of the Village of Morton Grove. However, the Illinois Pension Code does provide for audits annually of these plans (with the exception of the Morton Grove plan). These audits could be used as a check on the actuarial methodology and assumptions utilized in the plans, but such aspect of the audit is not compelled statutorily.

### III. FINANCING

The safety of the pension guaranteed an employee of the State of Illinois or one of its political subdivisions, under the various plans therein in force, would appear to depend at least in part upon the

financing aspect of the plans. This may be particularly true because the level of benefits, under a provision of the Illinois State Constitution, cannot be reduced. See *Report* at 35-36. Financing, for the purpose of this report, will mean the various assurances the employee has that the money to pay his or her benefits will be available. This includes the type of obligation the governmental employer has to contribute (i.e., statutory, contractual, etc.), the sources of the governmental contributions (i.e., general revenues, special taxes, general obligation of the State, etc.), the ability of the employee to compel contributions by a writ of mandamus, and the ability of the employer to raise funds in excess of those specifically delineated as requisite by the statutes where such amounts are insufficient.

#### *A. Obligations to contribute*

With the notable exceptions of the Pension Plan of the Village of Morton Grove and the Chicago Transit Authority Pension Plan, the governmental pension plans of the State of Illinois and its political subdivisions are statutorily obligated by the various provisions of the Illinois Pension Code to make their annual contributions and pay out benefits. The obligations of the Chicago Transit Authority and the Village of Morton Grove are contractual.

#### *B. Sources of and limitations on governmental contributions*

Generally, the taxing powers of the State of Illinois and of its political subdivisions constitute the sources of the promised pension funds. The State pension funds are paid out of the general treasury, which is supported by the taxes raised by the State. The local pension plans, with the exception of the plans of the Chicago Transit Authority and the Public Libraries Employees, and to a more limited extent the plans of the Illinois Municipal Retirement Fund and the Houses of Correction Employees, are funded by special taxes levied by the jurisdiction.

With regard to the pension plans of the State of Illinois itself, the obligation to make payments of benefits and contributions is made a "general obligation . . . of the State." Like other general obligations, it may be enforced by a suit to compel payment. Note, *Illinois State Emp. Ass'n v. McCarter*, 292 N.E. 2d 901 (Ill. App. 1973).

Most of the local pension plans governed by the Illinois Pension Code are obligated to contribute only out of funds derived from special taxes imposed for this purpose. This would appear to preclude compelled payment from other sources. One exception to this structure is the Illinois Municipal Retirement Fund (IMRF).

The IMRF is statutorily compelled to "appropriate an amount sufficient to provide for the current municipality contributions required . . . for the fiscal year." IPC § 7-171. The applicable municipality is permitted, though not compelled, to levy the necessary tax to make the contributions. IPC § 7-171. The permissive character of the tax authorization and the general requirement that the moneys be "appropriated" would appear to mean that other sources of local revenues may be used to meet the pension requirements of the municipality.

Two other governmental pension plans for local units are financed through other than a special tax. The Public School Teachers' Pension and Retirement Fund receives appropriations from the State of Illi-

nois. IPC § 17-128. The Firemen's Pension Fund (Municipalities 500,000 and Under) funds its plan partially from "fines imposed for the violation of fire ordinances, the enforcement or collection of which may be charged to and be under the supervision of the chief officers or subordinate officers of such fire departments." IPC § 4-118.

Even the jurisdictions compelled to exercise their taxing power to fund their pension obligations do not always have unlimited ability to tax for this purpose. Five of these jurisdictions may tax only to the lesser of the amount required to fund the plan or a stated percentage rate on the taxable property within its jurisdiction. These five rates are:

1. Firemen's Annuity and Benefit Fund (Cities over 500,000)—.0863%. IPC § 6-165;
2. Municipal Employees', Officers', and Officials' Annuity and Benefit Fund (Cities over 500,000 Inhabitants)—.1093%. IPC § 8-173;
3. Park Employees' and Retirement Board Employees' Annuity and Benefit Fund (Cities over 500,000 Inhabitants)—.0275%. IPC § 11-169;
4. Public School Teachers' Pension and Retirement Fund (Cities over 500,000 Inhabitants)—.202%. IPC § 17-128;
5. House of Correction Employees' Pension Fund—.0009%. IPC § 19-104.

While a municipality may borrow to pay its retirement fund debts, this may be of little value as protection for the plan's beneficiaries because of a provision of the Illinois Municipality and Village Code that states, in applicable part:

Before, or at the time of incurring any indebtedness, the corporate authorities shall provide for the collection of a direct annual tax sufficient to pay the interest on the debt as it falls due, and also to pay and discharge the principal thereof within 20 years after contracting the debt. 24 Ill. Rev. Stat. § 8-1-3.

Where, therefore, the locality is unable to raise additional revenues by tax levy because of the Pension Code's limitation on its taxing power, it may arguably be restricted from doing so indirectly by borrowing, since that, too, would require levy of a general tax.

Where a locality is unable to meet its obligations to the pension fund the State has intervened. Polk County, Illinois, fell behind in its funding of pension benefits during the past years because of a pre-1970 Illinois Constitution limitation on its ability to levy property taxes. Its tax base had become smaller due to taking of some of its farm land by the State and the Federal governments. The Illinois Municipal Retirement Fund, of which the county was a member, brought suit in 1974 in the Circuit Court of Illinois, in and for Polk County, to compel payment. The State, however, recently intervened by passing legislation, signed in 1975, to grant Polk County a non-interest bearing loan of \$140,000 to assist it in paying its debts, including the debt to the pension fund. The suit, however, is still pending, awaiting payment of the debt.

Therefore, while the State employees' pension plans are backed both by "general obligation" provisions and the general taxing revenues of the State, the local plans, generally, are backed only by the power of the locality to levy a special tax for the purpose of paying its pension obligations.

#### *C. Compelling benefits*

There would appear to be precedents in the pension area to utilization of the extraordinary writ of mandamus to compel payment of pension benefits. See *Report* at 35, fn. 2. Similarly, there would appear

to be precedents to the use of the same writ to compel levy of a local tax in order to force payment of benefits and pension obligations. See *Report* at 2, fn. 2. With the exception of the Illinois Municipal Retirement Fund plans and the plans for the House of Corrections Employees and the Public Libraries Employees, where the tax is not mandatorily compelled, the writ would appear a viable remedy to obtain pension benefits.

#### *D. Funding beyond the statutory minimum*

If the statutory provision setting forth the funding requirements of the governmental employer is not based on an up-to-date actuarial determination, there is a possibility that the fund will be insufficient to pay all required benefits. One example would be where there are increases in benefit levels, while the level of funding is related to the level of contributions made by the employees several years prior to the benefit increase. In this situation, the funding could be inadequate. The capability of the governmental employer to make additional funding contributions may be a valid point of question. In most of the Illinois local governmental pension plans this additional funding would be available.

The plans governing the municipal organizations of the State of Illinois generally provide that the Board of Trustees of the plan may determine at any time that the available revenues are insufficient to fund the benefits required and may meet their requirements through various means. The different provisions on this point allowing the Board to meet the required deficits are:

1. Policemen's Pension Fund (Municipalities 500,000 and Under)—"If at any time there are not sufficient moneys in the fund to pay the allowances of the Board to its beneficiaries, the city council or Board of Trustees of the municipality shall make every effort consistent with law to replenish the fund so that all beneficiaries may receive the amounts to which they are entitled. If, after every effort as aforesaid, there remains a deficit in the fund, the beneficiaries shall be paid pro rata from the available funds, but no allowance or order of the Board shall be held to create any liability against the municipality, except upon the fund so set apart as aforesaid for the payment thereof." IPC § 3-142. The concept of replenishing the fund with "every effort consistent with law" was probably intended to preclude levying taxes beyond the old Illinois Constitution limitations. Today, however, this would probably mean levying extra taxes or floating additional bonded debt to make the necessary pension contributions. This term, however, is subject to interpretation and might result in litigation by beneficiaries of the pension fund to compel extraordinary taxes or bonds;

2. Policemen's Annuity and Benefit Fund (Cities over 500,000)—"If the funds available are insufficient during any year to meet the requirements of this Article, the city may issue tax anticipation warrants against the tax levy for the current fiscal year." IPC § 5-168 (hereinafter, "standard tax warrant provision");

3. Firemen's Annuity and Benefit Fund (Cities over 500,000)—"Standard tax warrant provision." IPC § 8-165;

4. Municipal Employees', Officers', and Officials' Annuity and Benefit Fund (Cities over 500,000 Inhabitants)—"Standard tax warrant provision." IPC § 8-173;

5. County Employees' and Officers' Annuity and Benefit Fund (Counties over 500,000 Inhabitants)—"Standard tax warrant provision." IPC § 9-169;

6. Laborers' and Retirement Board Employees' Annuity and Benefit Fund (Cities over 500,000 Inhabitants)—"Standard tax warrant provision." IPC § 11-169;

7. Sanitary District Employees' and Trustees' Annuity and Benefit Fund—"Standard tax warrant provision." IPC § 13-169;

8. Public School Teachers' Pension and Retirement Fund (Cities of over 500,000 Inhabitants)—"If in any fiscal year the amounts accruing to the fund from taxes levied for the purpose of providing revenue for the fund, together with the amounts received by the fund under Section 34-87 of 'The School

Code for such year, do not equal the total contributions made by the teachers for such year, or if the total income of the fund in any fiscal year from all sources is less than the total expenditures by the fund for such year, the Board of Education shall, in the next succeeding year, in addition to demanding and directing the annual tax levy for the fund, set apart and appropriate from moneys derived or to be derived from its tax levy for educational purposes, a sum sufficient to remove such deficiency or deficiencies, and promptly pay such sum into the fund in order to restore any of the reserves of the fund that may have been so temporarily applied.

The plans not delineated herein do not appear to provide for the possibility of underfunding, and it is arguable, though not certain, that the provisions calling for a tax to fund the plan without any provision for additional funding are intended to be exclusive, precluding additional funding of the plan.

#### IV. FIDUCIARY STANDARDS

The fiduciary standards which apply to a pension plan may be as significant to the solvency and stability of the plan as the funding requirements, since misdealing by the trustees of the plan can easily defeat any required funding or financing provisions. Among the points which may be examined with regard to any pension plan are: (1) the limitations on fiduciary investment activities, (2) the selection and qualification of fiduciaries, (3) provisions in the law regarding enforcement and policing of the investment prohibitions, including auditing, (4) accounting methods required and records required, (5) prohibitions against self-dealing, and (6) requirements that the fiduciaries be bonded.

##### *A. Limitations on investment activity*

The governmental pension plans of the State of Illinois have a pattern of limitations on investment activities by the plan fiduciaries. Essentially, there are three degrees of statutory limitation, in addition to the general obligations imposed by the rules of fiduciary responsibility of the common law of trust, see *Report* at 3-4: (1) no investment activities by the Board of Trustees of the plan, this function being delegated to the Illinois State Board of Investment, (2) broad discretion in investment, utilizing a long list of permitted types of investment, (3) more narrow investment discretion, using a shorter list of permitted types of investment.

##### *1. Plans delegating the investment function to the Illinois State Board of Investment.*

The following plans delegate their investment function to the Illinois State Board of Investment:

- a. General Assembly Retirement System, IPC § 2-135;
- b. Judges' Retirement System, IPC § 18-135;
- c. State Employees' Pension Plan, IPC § 14-179;
- d. Public School Teachers' Pension and Retirement Fund (Cities over 500,000 Inhabitants)—this is as an alternative or concurrent investment practice with investment of plan assets by the plan's Board of Trustees, IPC § 17-146.1.

##### *2. Plans granting broad investment discretion to their boards of trustees*

In some plans, the Board of Trustees has the discretion to invest assets and funds of the plan in any of a number of investments, selecting from a list of thirteen or more types. Usually included in this list

are United States obligations and notes, obligations of Federal Land Banks, certain State or local bonds where the political unit is at least 30,000 inhabitants and the locality has a 10% property value debt limit, corporate bonds of companies with no default history over the last 5 years, certain Canadian bonds, certain direct obligations of the State of Israel, certain notes secured under the National Housing Act, loans to veterans guaranteed under the Servicemen's Readjustment Act of 1944, common and preferred stock in certain United States banks, common and preferred stock in certain life insurance companies, common and preferred stock in certain other insurance companies, certain other nationally listed stocks and securities, and real estate up to \$575,000 in value (IPC § 15-167).

The following pension plans permit these enumerated investments, though some with variations permitting, for example, acquisition of Puerto Rican bonds or shares in certain combined investment funds:

1. State Universities Retirement System. IPC § 15-167;
2. Teachers' Retirement System. IPC § 16-179;
3. Policemen's Annuity and Benefit Fund (Cities over 500,000). IPC § 5-187;
4. Firemen's Annuity and Benefit Fund (Cities over 500,000). IPC § 6-183;
5. Illinois Municipal Retirement Fund. IPC § 7-201;
6. Municipal Employees', Officers', and Officials' Annuity and Benefit Fund (Cities over 500,000 Inhabitants). IPC § 8-201;
7. County Employees' and Officers' Annuity and Benefit Fund (Counties over 500,000 Inhabitants). IPC § 9-194;
8. Laborers' and Retirement Board Employees' Annuity and Benefit Fund (Cities over 500,000 Inhabitants). IPC § 11-190.
9. Park Employees' and Retirement Board Employees' Annuity and Benefit Fund (Cities over 500,000 Inhabitants). IPC § 12-166.
10. Sanitary District Employees' and Trustees' Annuity and Benefit Fund. IPC § 13-189; and
11. Public School Teachers' Pension and Retirement Fund (Cities over 500,000 Inhabitants). IPC § 17-146.

The Chicago Transit Authority's Pension Plan grants its fiduciaries large discretion in investment, but through a short restriction rather than through long lists of authority. The plan states only that its trustees must at all times keep the fund "prudently invested."

The Pension Plan of the Village of Morton Grove, the Pension Plans of the Houses of Correction Employees and the Public Library Employees, and the Forest Preserve District Employees' Annuity and Benefit Fund contain no restrictions other than the implied restrictions of the general fiduciary law of the State of Illinois.

### *3. Plans granting limited investment discretion to their boards of trustees*

There are a few governmental pension plans in the State of Illinois which broadly restrict fiduciary investments by permitting investment in only a few select types of investments. These include the following plans (notations are made as to the permitted investments):

1. Policemen's Pension Fund (Municipalities 500,000 and Under)—permits investment in "interest bearing bonds or tax anticipation warrants of the United States, of the State of Illinois, or of any county, township, or municipal corporation in the State of Illinois; insured withdrawable capital accounts of the State chartered savings and loan associations; insured withdrawable capital accounts of federal chartered federal savings and loan associations if the withdrawable capital accounts are insured by the Federal Savings and Loan Insurance Corporation; and in savings accounts or certificates of deposit of a national or State bank.... IPC § 3-135;

2. Firemen's Pension Fund (Municipalities 500,000 and Under)—same as above. IPC § 4-128.

### *B. Selection and qualification of fiduciaries*

Generally, the trustees of the statutory governmental pension plans in Illinois are a group of between five and seven individuals, composed of high officials in the employer-agency and/or the municipality participating in the plan, as well as a number of beneficiaries of the plans.

The trustees of the Pension Plan of the Village of Morton Grove are the writers of the "contract," Continental Assurance Company, Chicago, Illinois.

The trustees of the Chicago Transit Authority Pension Plan must be "a bank or trust company incorporated under the laws of the United States or of the State of Illinois," with a combined capital and surplus of at least \$7,000,000, authorized by law to accept and execute trusts of at least 10 years in duration.

### *C. Enforcement and policing of restrictions on pension plan fiduciaries*

The restrictions on the fiduciaries are not necessarily meaningful unless there is some policing and enforcement. Pursuant to this concept of policing, each governmental pension plan for State employees in Illinois provides for biennial auditing by a certified public accountant designated by the Auditor General. Furthermore, each Board of Trustees is to keep records of its proceedings and accounts.

The statutory governmental pension plans covering local employees in Illinois generally require biennial auditing by the Director of Insurance of the State, annual reports to the City Council (at the time of requesting a special tax levy), or an audit each year by a certified public accountant. In all cases records must be kept.

The Pension Plan of the Village of Morton Grove does not appear to call for any policing of the actions of the fiduciary. The Chicago Transit Authority's Pension Plan does provide that the CTA shall keep records of all data and submit the information to the plan's Committee at any time requested.

### *D. Accounting methods*

None of the governmental pension plans in Illinois appear to delineate the accounting procedures to be utilized, although accurate accounting methods would seem to be an implicit part of the basic fiduciary duty owed any trust by its trustees.

### *E. Self-dealing*

Most of the governmental pension plans in Illinois contain some explicit provision precluding some forms of self-dealing beyond that precluded by the general law of trusts as it is applied in Illinois. See *Report* at 36. The provisions generally preclude a trustee or employee of the Board of Trustees from receiving any direct or indirect compensation or commission on any purchase or sale of properties by the trust. Such a provision may be found in the following plans:

1. General Assembly Retirement System. IPC § 1-152;
2. Judges' Retirement System. IPC § 18-159;
3. State Employees' Retirement System. IPC § 14-194;
4. Policemen's Annuity and Benefit Fund (Cities over 500,000). IPC § 5-221;
5. Firemen's Annuity and Benefit Fund (Cities over 500,000). IPC § 6-215;
6. Municipal Employees', Officers', and Officials' Annuity and Benefit Fund (Cities over 500,000 Inhabitants). IPC § 8-246;

7. Laborers' and Retirement Board Employees' Annuity and Benefit Fund (Cities over 500,000 Inhabitants). IPC § 11-225;
8. Park Employees' and Retirement Board Employees' Annuity and Benefit Fund (Cities over 500,000). IPC § 12-186;
9. Sanitary District Employees' and Trustees' Annuity and Benefit Fund. IPC § 13-189;

#### *F. Bonding of fiduciaries*

Although in general members of the Board of Trustees of the various governmental plans of Illinois are not required by law to be bonded, in a significant number of these pension plans the State Treasurer or the appropriate City or County Treasurer is made the Treasurer of the plan and required to acquire an adequate bond. The following is a listing of the plans in which there is an individual, the Treasurer of the applicable area unless otherwise noted, required to post adequate bond.

1. General Assembly Retirement System. IPC § 2-145;
2. State Employees Retirement System. IPC § 14-185;
3. Firemen's Pension Fund (Municipalities 500,000 and Under). IPC § 4-130;
4. Policemen's Annuity and Benefit Fund (Cities over 500,000). IPC § 5-210;
5. Firemen's Annuity and Benefit Fund (Cities over 500,000). IPC § 6-207;
6. Illinois Municipal Retirement Fund—Utilizes State Treasurer. IPC § 7-214;
7. Municipal Employees', Officers', and Officials' Annuity and Benefit Fund (Cities over 500,000 Inhabitants). IPC § 8-223;
8. County Employees' and Officers' Annuity and Benefit Fund (Counties over 500,000 Inhabitants). IPC § 9-216;
9. Laborers' and Retirement Board Employees' Annuity and Benefit Fund (Cities over 500,000 Inhabitants). IPC § 11-212;
10. Park Employees' and Retirement Board Employees' Annuity and Benefit Fund (Cities over 500,000)—Bonding applies to the custodian of the fund only. IPC § 12-170;
11. Sanitary District Employees' and Trustees' Annuity and Benefit Fund. IPC § 13-205;
12. Judges' Retirement System. IPC. § 18-153.



# STATE AND LOCAL PENSION PLANS FOR THE STATE OF ILLINOIS: COVERAGE, FUNDING, FINANCING, AND FIDUCIARY STANDARDS

(by Howard M. Zaritsky, Legislative Attorney, American Law Division)

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## INTRODUCTION

The State of Illinois has established statutory guidelines for most of its State and local governmental pension plans. See Illinois Pension Code, Chapter 108½, Illinois Revised Statutes. The State's pension system is comprised of mandatorily established and regulated State and local pension plans. The employees of the State, cities and counties are treated with reasonable similarity, though there are sufficient differences to warrant separate examination of each plan.

There are five plans applicable to employees of the State of Illinois: four specific plans (the General Assembly Retirement System, the State Universities Retirement System, the Teachers' Retirement System, and the Judges' Retirement System), and one general plan (the State Employees Pension Plan). For employees of the Universities System, the General Assembly, the Judiciary, or the Public School System, the specific plans described in the appropriate statutes provide essential retirement benefits. For other employees of the State, the State Employees Pension Plan provides these benefits. The funding requirements, coverage, fiduciary standards, and financing, however, differ from plan to plan. Each is independently discussed in this report.

The local plans are also statutorily regulated and established with two notable exceptions. There are thirteen such plans: one general pension plan and twelve specific pension plans. The general pension plan is the Illinois Municipal Retirement Fund. The specific plans are divided by employment and by population areas. Where the plan designates its application is limited to cities over 500,000 in population, it will currently only apply to Chicago, Illinois. Where it is to apply to counties over 500,000 in population, it will currently only apply to Cook County, which contains Chicago.<sup>1</sup> The different plans applicable to Chicago and Cook County are the Firemen's Annuity and Benefit Fund, the Policemen's Annuity and Benefit Fund, the Municipal Employees', Officers', and Officials' Annuity and Benefit Fund, the County Employees' and Officers' Annuity and Benefit Fund, the Laborers' and Retirement Board Employees' Annuity and Benefit Fund, the Park Employees' and Retirement Board Employees' Annuity and Benefit Fund, and the Public School Teachers' Pension and Retirement Fund. The plans applicable to other municipalities and districts are the Policemen's Pension Fund, the Firemen's Pension Fund, the Forest Preserve District Employees' Annuity and Benefit Fund, the Sanitary District Employees' and Trustees' Annuity and Benefit Fund, and the so-called Closed Funds (for the Houses of Correction Employees and the Public Libraries Employees). Except for the general

<sup>1</sup> It may be noted that these plans could, at some future date, become applicable to other cities or counties in Illinois, if their populations grew to exceed 500,000. They currently, however, only apply to Chicago and to Cook County.

fund and the so-called Closed Funds, the municipalities are required to establish and operate these plans in pursuance to Illinois statutory law.

There are also two nonstatutory plans for employees of local governmental units in the State. There is the Chicago Transit Authority Pension Plan, which is created by Statute but is not regulated by statute, and there is the pension plan of the Village of Morton Grove, Illinois, a village of over 26,000 inhabitants in Cook County.

The overall purpose of this report is to discuss in some detail the various pension plans covering employees of the State and local governmental units of the State of Illinois. Each statutory pension plan will be analyzed for coverage, funding, financing, and fiduciary requirements. Thereafter, the two nonstatutory pension plans will be so analyzed.

Included are two appendices. The first appendix contains the provisions of the pension plan of the Chicago Transit Authority, and the second contains the provisions of the pension plan of the Village of Morton Grove, Illinois.

## STATE AND LOCAL PENSION PLANS FOR THE STATE OF ILLINOIS: COVERAGE, FUNDING, FINANCING, AND FIDUCIARY STANDARDS

The State of Illinois and its contained municipal organizations provide their employees with a number of different pension and retirement plans. These plans are, in largest part, regulated by the Illinois Pension Code and the Constitution of the State of Illinois. This report will examine these plans; both those applicable to the State's employees and those applicable to employees of local governmental units. The plans will be studied with regard to their features respecting coverage, funding, financing, and fiduciary standards.

Coverage, for the purpose of this report, means the class of State and local employees who may receive benefits under a certain plan. The fact that employees may elect not to participate will not be discussed, nor will requirements as to years of employment necessary to participate. The coverage factor is intended to separate the employees of the State and local government who are covered by each plan.

Funding, for the purpose of this report, means the required contributions of both the employees and the government. The definitional scope of such contributions, i.e. the percentage of employee salaries or the factors which determine the government's contributions, will be discussed.

Financing, for the purpose of this report, will mean the resources behind the promised governmental contributions. Included in this determination will be whether or not the general taxing power of the State or local government will be behind the contributions and whether a specific directive to the appropriate officer of the State or local unit exists, which could be enforced by writ of mandamus.<sup>2</sup>

The Constitution of the State of Illinois, furthermore, provides that:

Membership in any pension or retirement system of the State, any unit of local government or school district, or any agency or instrumentality thereof, shall be an enforceable contractual relationship, the benefits of which shall not be diminished or impaired. Article XIII, Section 5.

The applicability of this provision to financing pension benefits, however, is not totally clear. One commentary has asserted that the provision does not require "the funding of pension programs."<sup>3</sup> The

<sup>2</sup> The writ of mandamus is an extraordinary judicial remedy by which a court of competent jurisdiction may command "an officer to whom it is addressed to perform some specific duty which the relator is entitled of right to have performed and which the party owing the duty has failed to perform." 26 *Illinois Law and Practice* Mandamus, Sec. 2 (1956, supp. 1974). The writ is available in the State of Illinois. 87 Ill. Rev. Stat., Sec. 1.

Mandamus has been held available to compel the levy of a statutorily required tax, such as is also found for the majority of local pension plans under the Illinois Pension Code. *People ex rel. Cahokia Unit School District No. 187 v. East St. Louis School District No. 189*, 6 Ill. App. 3d 511 (1972). It has also been found applicable in the pension field, to compel the Director of Finance of the State of Illinois to properly determine benefits and contributions for a statutory pension plan. *Illinois State Employees Association v. McCarter*, 9 Ill. App. 3d 764 (1973). In this decision, the court noted that the statute "creating the retirement system expressly provides the manner by which the amount of State contributions to the System are to be determined," therefore permitting a writ of mandamus to be issued.

<sup>3</sup> *Smith-Hurd Illinois Annotated Statutes: Constitutional Commentary*, State Constitution, Art. 13, Sec. 5 (1975-1976).

provision does, however, afford some basis for contesting the acts of the State inhibiting payment of accrued benefits and rights.<sup>4</sup>

Fiduciary standards, for the purpose of this report, are the duties and responsibilities of the trustees of the pension plans. The general duties of all trustees would appear to apply to these trustees in the absence of special provisions.<sup>5</sup> Such duties include the duty to exercise diligence and care of a reasonable, prudent person under like circumstances in dealing with his or her own affairs.<sup>6</sup> Furthermore, like other trustees, the trustee of the pension plans must observe a high standard of ethical conduct and good faith in the administration of the trust.<sup>7</sup> The trustee is not, however, an insurer of the corpus and he or she is not liable for losses to the trust so long as good faith, reasonable prudence, care, and diligence are exercised.<sup>8</sup> The trustee may be liable for losses or depreciation in value of trust assets where there is failure to act with such care or diligence, determined by the facts and circumstances known at the time of the investment.<sup>9</sup>

In addition to these general fiduciary requirements of trustees in Illinois, the pension laws provide special fiduciary standards and limitations in many cases. These will be the subject of examination in this report: the special oaths, limitations on investment, civil sanctions and criminal sanctions against retirement fund (trust) trustees.

### *I. The Pension Plans Applicable to Employees of the State of Illinois*

There are five different pension plans applicable to employees of the State government of Illinois. Four of the plans cover employees of specific employers: the General Assembly Retirement System, the State Universities Retirement System, the Teachers' Retirement System of the State, and the Judges Retirement System of the State. The fifth plan applies to those employees of the State of Illinois who are not covered by the other four plans. It is the State Employees' Pension Plan.

In consideration of the five plans certain similar features become evident. First, both the State and the participating employees contribute toward funding of each plan. The amounts contributed by the government and employees in each plan differ, but they are all "contributory" plans.

Second, in each pension plan the Comptroller of the State of Illinois is ordered to issue the requisite warrants for State obligations to the plan (benefits and contributions). The Treasurer of the State is compelled by statute to pay on those warrants from the general treasury of the State. Each of these duties would appear within the scope of a writ of mandamus.<sup>10</sup>

The pension laws of the State of Illinois are found in Chapter 108½ of the Illinois Revised Statutes, enacted in 1963 as the Illinois Pension Code (hereinafter, "IPC").

<sup>4</sup> See, however, *People ex rel. I.F.T. v. Lindberg*, 60 Ill. 2d 266 (1975), holding that this provision does not require a specific level of appropriations during the fiscal period for pensions, and affords no basis for attacking the Governor's veto of pension appropriations.

<sup>5</sup> See, e.g., *Wilson v. Board of Trustees of the State Universities Retirement System*, 108 Ill. App. 2d 210 (1969), which, in dealing with the question of a wife who killed her husband, was convicted of voluntary manslaughter, and sought survivor's benefits under the State Universities Pension System, discussed the deceased and his wife in terms of "beneficiaries" and the trustees as if trustees of an ordinary trust. (Note: she did not get benefits).

<sup>6</sup> 35 Illinois Law and Practice Trusts, Sec. 122 (1956, supp. 1974).

<sup>7</sup> *Id.*

<sup>8</sup> 35 Illinois Law and Practice Trusts, Sec. 153 (1956, supp. 1974).

<sup>9</sup> *Id.*

<sup>10</sup> See fn. 2, *supra*, p. 35.

## A. THE GENERAL ASSEMBLY RETIREMENT SYSTEM

**1. Coverage**

The General Assembly Retirement System covers members of the General Assembly, the President of the Senate and members of the General Assembly temporarily in the military. IPC, Sec. 2-105.

**2. Funding**

Both the State and the covered employees contribute to funding of the General Assembly Retirement System. The covered employees are required to contribute 7% of each "payment of salary" received after January 10, 1973. Payments for a widow's annuity are an additional 2% as are payments for widower's annuity. The officers of the General Assembly, who are given additional payments for their services as officers, must contribute on those additional payments as well as ordinary salaries. IPC, Sec. 2-126.

The State of Illinois is required to contribute to the General Assembly Retirement System annually in amounts which, together with the contributions made and required to be made by the employees covered by the System, as well as interest earned on investments, will meet the costs of maintaining the System. These costs include at least the amount to meet:

(a) actuarial requirements for such year for annuities in excess of the amounts provided for by accumulated contributions of the individual retired members and the expense of administration, (b) an amount equal to the contributions made by the members towards the automatic increase in retirement annuity, . . . and (c) to create and maintain a reserve at the end of the year of an amount equal to the estimated amount required to pay annuities, refunds and expenses during the succeeding year. IPC, Sec. 2-124.

**3. Financing**

As noted *supra*, p. 36, the State Treasury is the source of funds for the General Assembly Retirement System, and use of these funds would appear compellable by writ of mandamus.

**4. Fiduciary standards**

The Board of Trustees of the General Assembly Retirement System trust are required to take an oath vowing to:

diligently and honestly administer the affairs of the system and . . . not knowingly violate or wilfully permit the violation of any of the provisions of this Article. IPC, Sec. 2-127.

The investments of trust funds are not conducted by the Board of Trustees. IPC, Sec. 2-135. Rather, they are conducted by the Illinois State Board of Investment under Article 22A of the Illinois Pension Code.

Trustees and employees of the System are prohibited from having any:

direct interest in the income, gains or profits of any investments made by the board, nor shall any such person receive any pay or emolument for services in connection with any investment. No trustee or employee of the board shall become an endorser or surety, or in any manner an obligor for money loaned or borrowed from the system. EPC, Sec. 2-152.

Violations of these prohibitions constitute "petty offenses". IPC, Sec. 2-152. A similar penalty attaches to a person who:

knowingly makes any false statement, or falsifies or permits to be falsified any record of this system, in any attempt to defraud the system \* \* \* IPC, Sec. 2-155.

## B. STATE UNIVERSITIES RETIREMENT SYSTEM

*1. Coverage*

The State Universities Retirement System covers presently or formerly employed members of "educational, administrative, secretarial, clerical, mechanical, labor or other staff" of certain organizations within the State of Illinois. IPC, Sec. 15-106. The employee must be employed at least one-half time. IPC, Sec. 15-106. Included in the list of organizations are:

The University of Illinois, Southern Illinois University, the State Board of Higher Education, the State Geological Survey, the State Natural History Survey, the State Water Survey, the University Civil Service Merit Board, the Board of Trustees of the State Universities Retirement System, the Illinois Junior College Board, Class I junior college boards, any association of Class I junior college boards organized under Section 3-55 of the "Public Junior College Act", the Board of Governors of State Colleges and Universities, Colleges and Universities governed by the Board of Governors of State Colleges and Universities, the Board of Regents of the Regency Universities System, regency universities governed by the Board of Regents, and, for and only during the period for which employer contributions required by this Article are paid, the following organizations: the alumni associations, the foundation and the athletic associations which are affiliated with the universities and colleges included in this Section as Employers. IPC, Sec. 15-106.

*2. Funding*

Both the State and the covered employees contribute to funding of the State Universities Retirement System. The covered employees are required to contribute 6½% of each payment of earnings after September 1, 1969, as well as an additional ½% to finance increased benefits as required by the act. IPC, Sec. 15-175. Survivors' insurance payments are another 1% of earnings payments. IPC, Sec. 15-158.

The State of Illinois is required to contribute to the State Universities Retirement System in an amount which, in combination with earnings on the System's investments and employee contributions, will meet the estimated cost of current annuities, survivors' insurance benefits, costs of administration, and to accumulate assets sufficient to equal the liability for all benefits expected to be paid to then annuitants, their survivors, accumulated additional normal and survivors insurance contributions of current participants and reasonable reserves. IPC, Sec. 15-155. Also included in the costs which must be funded by the State are the cost of acquisition of land and construction of an office building, amortized over a period of 30 years, less annual rentals which may be expected. IPC, Sec. 15-155. In no event will the contributions of the State for a fiscal year be less than an amount required to fully fund the current service costs with actuarial reserves as required, plus interest on unfunded accrued liabilities. IPC, Sec. 15-155.

*3. Financing*

As noted *supra*, p. 36, the State Treasury is the source of funds for the State Universities Retirement System, and use of these funds would appear compellable by a writ of mandamus. Furthermore, the required State contributions, benefits and administrative expenses are made "obligations of the State of Illinois," and may be enforced as other obligations, in court. IPC, Sec. 15-156.

#### 4. Fiduciary standards

The Board of Trustees of the State Universities Retirement System trust are required to take an oath that:

the person will diligently and honestly administer the affairs of this retirement system, and will not knowingly violate or willfully permit to be violated any of the provisions of this Article. IPC, Sec. 15-169.

Furthermore, while the Board of Trustees has the power to invest the assets and corpus of the trust, it may only invest these assets in twelve stated types of investment:

(1) Bonds, notes and other direct obligations of the United States government; bonds, notes and other obligations of any United States government instrumentality, whether or not guaranteed; and obligations the principal and interest of which are guaranteed unconditionally by the United States Government;

(2) Joint and several obligations of the twelve Federal Land Banks organized pursuant to the Federal Farm Loan Act of 1916 and operating under the supervision of the Farm Credit Administration; and obligations of the Inter-American Development Bank;

(3) Obligations of any state, or of any political subdivision in Illinois, or of any county or city in any other state having a population as shown by the last federal census of not less than 30,000 inhabitants provided that such political subdivision is not permitted by law to become indebted in excess of 10% of the assessed valuation of property therein and has not defaulted for a period longer than 30 days in the payment of interest or principal on any of its general obligations or indebtedness during a period of 10 calendar years immediately preceding such investment;

(4) Bonds, debentures, and other corporate obligations of any corporation created or existing under the laws of the United States or any state, district or territory thereof, provided there has been no default on the obligations of the corporation during the 5 years immediately preceding the purchase;

(5) Obligations guaranteed by the Government of Canada, or by any Province of Canada, or by any Canadian city with a population of not less than 150,000 inhabitants, provided (a) they are payable in United States currency and are exempt from any Canadian withholding tax, (b) the investment in any one issue of bonds shall not exceed 10% and (c) the total investments at book value in Canadian securities shall be limited to 5% of the total investment account of the system at book value;

(5.1) Direct obligations of the State of Israel for the payment of money, or obligations for the payment of money which are guaranteed as to the payment of principal and interest by the State of Israel, on the following conditions:

(a) The total investments in such obligations shall not exceed 5% of the book value of the aggregate investments owned by the fund;

(b) The State of Israel shall not be in default in the payment of principal or interest on any of its direct general obligations on the date of such investment;

(c) The bonds and interest thereon shall be payable in currency of the United States;

(d) The bonds shall contain an option for the redemption thereof after 90 days from date of purchase;

(e) The investment in these obligations has been approved in writing by investment counsel employed by the board, which counsel shall be a national or state bank or trust company authorized to do a trust business in the State of Illinois, or an investment advisor qualified under the Federal Investment Advisors Act of 1940 and registered under the Illinois Securities Act of 1953;

(f) The system making the investment shall have at least \$5,000,000 of net present assets.

(6) Notes secured by mortgages under Sections 203 and 207 of the National Housing Act which are insured by the Federal Housing Commissioner, or his successor or assigns, or debentures issued by such Commissioner, which are guaranteed as to principal and interest by the Federal Housing Administration, or agency of the United States Government;

(7) Loans to veterans guaranteed in whole or in part by the United States Government pursuant to Title III of the Act of Congress known as the "Service-men's Readjustment Act of 1944," 58 Stat. 284, 38 U.S.C. 693, as amended or supplemented from time to time, provided such guaranteed loans are liens upon real estate;

(8) Common and preferred stock of a bank, organized under the laws of the United States or any state, which has capital funds, represented by capital, surplus and undivided profits of at least 20 million dollars;

(9) Common and preferred stock of a life insurance company, organized under the laws of the United States or any state, which has capital funds, represented by capital, special surplus funds and unassigned surplus of at least 50 million dollars;

(10) Common and preferred stock of a fire or casualty insurance company, or a combination thereof, organized under the laws of the United States or any state, which has capital funds represented by capital, net surplus and voluntary reserves, of at least 50 million dollars;

(11) Other common and preferred stocks which are legal investments for trust funds under the laws of the State of Illinois, provided that (a) the stocks are listed on a national securities exchange as defined in the Federal securities Exchange Act, (b) the stocks are issued or guaranteed by a corporation created or existing under the laws of the United States or any state, district or territory thereof, (c) the corporation which issued or guaranteed the stock is not in arrears on payment of dividends on its preferred stock, (d) the corporation which issued or guaranteed the stock has paid a cash dividend on its common stock in each of the 10 years next preceding the date on which the stock is to be purchased, and its net earnings available for dividends on common stock during this period was at least equal to the amount of the dividends paid on such stock, (e) the total book value of all stocks owned by the system shall not exceed 40% of the total book value of all investments of the system, (f) the book value of stock investments in any one corporation shall not exceed 5% of the maximum amount which may be invested in stock, determined as of the date of the investment, and the investments in the stock of any one corporation shall not exceed 1% of the total outstanding stock of such corporation, (g) the investment in stock is approved by at least a majority of the members of the board after having been recommended by a national or state bank or trust company which is authorized to do a trust business in the State of Illinois, or an investment advisor who is qualified under the Federal Investment Advisors Act of 1940 and is registered under the Illinois Securities Law of 1953, (h) the preferred stocks must be issued or guaranteed by a corporation which, for a period of 5 fiscal years next preceding the date of investment for which the necessary statistical data are available in published fiscal year statements, had average annual net income plus average annual fixed charges at least equal to 2 times the sum of its average annual fixed charges, and which, for the last 2 fiscal years of such period, had annual net income plus annual fixed charges of at least 1½ times the sum of its dividend requirements for preferred stock and its fixed charges, and (i) if the corporation has acquired a substantial part of its property within 10 years immediately prior to the date of the investment, by consolidation, merger, purchase of all or a substantial portion of the assets of any other corporation or corporations or purchase of the assets of any unincorporated business enterprise, the net income, fixed charges and dividends of the acquired, predecessor or constituent corporation or enterprises shall be consolidated and adjusted in applying the tests set forth in this paragraph (11); and

(12) Real estate acquired by purchase, gift, condemnation or otherwise, and an office building to be constructed thereon for the use of the system at a total cost not to exceed \$575,000. The board may lease surplus space in the building and is authorized to use proceeds from rental of space for operation, maintenance and furnishing of the building. IPC, Sec. 15-167.

Furthermore, it is a Class A misdemeanor<sup>11</sup> to falsify or permit to be falsified any record or document to the pension fund in order to defraud. IPC, Sec. 15-187.

#### C. TEACHERS' RETIREMENT SYSTEM OF THE STATE

##### 1. Coverage

The membership in the Teachers' Retirement System of the State of Illinois is restricted to full-time or permanently employed teach-

<sup>11</sup> A Class A misdemeanor is the most serious of misdemeanors under Illinois Criminal Law. 38 Ill. Rev. Stat., Sec. 1005-5-1(c)(1). The penalty is generally between one year and six months imprisonment. 38 Ill. Rev. Stat., Sec. 1005-5-2(b)(1).

ers, teacher-secretaries, substitute teachers, supervisors, principals, supervising principals, business managers, school nurses, or librarians teaching in the public common schools, as well as:

(b) Any teacher, teacher-clerk, principal, supervisor, supervising principal, superintendent or assistant superintendent, and any certified librarian or assistant librarian employed in the Illinois Braille and Sight Saving School, the Illinois School for the Deaf, the Illinois State Training School for Boys, the Illinois State Training School for Girls, the Lincoln State School, the Dixon State School, the Illinois Soldiers' and Sailors, Children's School, the Illinois Visually Handicapped Institute, the Illinois Children's Hospital-School, or in any other facility of the Department of Mental Health or the Department of Children and Family Services, the Illinois Industrial School for Boys, or in any other facility of the Department of Corrections, the State Reformatory for Women, or the Illinois State Penitentiary, or in any facility of the Department of Corrections—Adult Division and the Department of Corrections—Juvenile Division on a full-time basis, or if not full-time on a permanent and continuous basis in a position in which services are expected to be rendered for at least one school year, and who is either certificated under the law governing the certification of teachers or a contributor to or participant in the "State Institution Teachers' Pension and Retirement Fund" at some time during the year immediately preceding September 1, 1941;

(c) Any superintendent of an educational service region, assistant superintendent of an educational service region, Superintendent of Public Instruction; any person employed in the office of the Superintendent of Public Instruction as an executive; any executive of the boards engaged in the service of public common school education in school districts within this system of which the Superintendent of Public Instruction is an ex-officio officer;

(d) Any qualified psychological examiner who holds a valid permit under Section 14-1.09 of The School Code and who works with children in public school programs authorized by Sections 14-1.01 through 14-1.10 of The School Code;

(e) Any employee of a school board association operating in compliance with Article 23 of the School Code who is certified under the law governing the certification of teachers;

(f) Any school nurse described in paragraph (d) of Section 7-137 of Article 7 of this Code, electing in accordance with that section to become a member of this system;

(g) Any teacher, dean or president, of a Class II junior college and any professional associates and advisors employed in the office of such dean or president, any testing officer, counselor, librarian, or person performing the duties of a testing officer, counselor or librarian in Class II junior colleges who is certified under the law governing the certification of teachers;

(h) Any person employed by the Retirement System as an executive who is certified under the law governing the certification of teachers; and

(i) Any director, supervisor, instructor, counselor, project writer or other professional personnel employed on a full-time basis or if not full-time on a permanent and continuous basis in a position in which services are expected to be rendered for at least one school year, by and under the supervision and control of a superintendent of an educational service region, provided such employment requires the employee to be certified under the law governing the certification of teachers and is in an educational program serving 2 or more districts in accordance with a joint agreement authorized by the Illinois School Code or an educational program conducted by the superintendent of an educational service region in conformity with Federal legislation authorizing such programs. IPC, Sec. 16-106

## 2. Funding

The State and the covered employees both contribute to funding the Teachers' Retirement System of the State of Illinois. The covered employees are required to contribute 6 1/2% of their salary payments for each year after June 30, 1971. An additional 1% contribution is required where survivors' benefits are desired. IPC, Secs. 16-152, 16-153.

The State contributes, out of the common school funds and other funds, enough to meet the obligations for the next fiscal year. IPC, Sec. 16-158. The amount estimated is actuarially determined to meet: the State costs for retirement allowances and benefits earned by the members during the fiscal year, including regular interest on any State obligation at the beginning of the year for the cost of benefits, retirement allowances and benefits earned in prior years and not previously provided by State contributions. IPC, Sec. 16-159.

This amount contributed by the State may not be less than 1.2 multiplied by the contributions of the members of the plan. IPC, Sec. 16-158.

### 3. *Financing*

As noted *supra*, p. 4, the State Treasury is the source of funds for the Teachers' Retirement System, and use of these funds would appear compellable by writ of mandamus. Furthermore, the required State contributions are made "obligations of the State of Illinois." IPC, Sec. 16-162.

### 4. *Fiduciary standards*

Members of the Board of Trustees of the State Teachers' Retirement System are required to take an oath to "diligently and honestly administer the affairs of this" plan. Furthermore, they must swear that they will not "knowingly violate or wilfully permit to be violated any of the provisions of law applicable to the retirement system." IPC, Sec. 16-166.

The investment power of the Board of Trustees is furthermore limited by statute. They may invest assets of the trust only in the listed types of investment:

Loans upon real estate shall be secured by first mortgage and shall not exceed 40% of the value of the realty as fixed by expert appraisal. The board may hold, assign, or sell any of the securities and investments of the system, as well as the proceeds of investments and any moneys belonging to the system. When the board determines upon the investment of any moneys or upon the conversion or sale of any securities, it shall, by resolution duly adopted by a majority vote of the board members, direct the custodian to so invest the moneys or convert or sell the securities.

The Board may also invest and reinvest the reserves as follows:

1. Bonds or other obligations which are payable from revenue or earnings specifically pledged therefor of a public utility in Illinois which is municipally owned either directly or indirectly through any civil division, authority or public instrumentality of the municipality, provided:

(a) the municipality has at least 2,500 inhabitants;  
 (b) the utility has been in operation in its present form for at least 7 years prior to the date of investments;

(c) bonds or obligations of such utility have not been in default for any period longer than 30 days;

(d) the rates for service are fixed and maintained and collected at all times so as to produce sufficient revenue or earnings to pay all operating and maintenance charges and both the principal and interest on such bonds or obligations;

(e) the investment in any one issue of such bonds does not exceed 25% of such issue;

(f) the total investment in these types of security does not exceed 15% of the total investments owned by the system.

2. Bonds or other obligations which are payable from revenue or earnings specifically pledged therefor of a public utility outside of the State of Illinois which is federally or municipally owned either directly or indirectly through any civil division, authority or public instrumentality, provided:

(a) the municipality has at least 30,000 inhabitants;

(b) the utility has been in operation for at least 10 years prior to the date of investment;

(c) bonds or other obligations of such utility have not been in default for any period longer than 30 days;

(d) the rates for service are fixed and maintained and collected at all times so as to produce sufficient revenue or earnings to pay all operating and maintenance charges and both the principal and interest on such bonds or obligations;

(e) the investment in any one issue of such bonds does not exceed 15% of such issue, and that the total investment in this type of security does not exceed 10% of the total investments of the system.

3. Revenue bonds issued by the University of Illinois, or any school, department or division thereof, Southern Illinois University, Illinois State Normal University, Eastern Illinois University, Northern Illinois University, and Western Illinois University, provided that the investment in any single issue of such bonds shall not exceed 15% of such issue, nor shall the total amount of bonds of this type exceed 5% of the total investments of the system.

4. Obligations guaranteed by the Government of the Dominion of Canada, or by any province of Canada, or by any Canadian city with population of not less than 150,000 inhabitants, provided:

(a) they are payable in United States currency;

(b) that the investment in any one issue of bonds does not exceed 10% of an issue; and

(c) the total investments in Canadian securities shall be limited to 5% of the total investment account of the system.

5. Bonds or other obligations of the Commonwealth of Puerto Rico, provided that the investment in any one issue of bonds thereof does not exceed 10%, and that the total investment in all securities of the said Commonwealth of Puerto Rico shall be limited to 2% of the total investment account of the system.

5.1) Direct obligations of the State of Israel for the payment of money, or obligations for the payment of money which are guaranteed as to the payment of principal and interest by the State of Israel, on the following conditions:

(a) The total investments in such obligations shall not exceed 5% of the book value of the aggregate investments owned by the fund;

(b) The State of Israel shall not be in default in the payment of principal or interest on any of its direct general obligations on the date of such investment;

(c) The bonds and interest thereon shall be payable in currency of the United States;

(d) The bonds shall contain an option for the redemption thereof after 90 days from date of purchase;

(e) The investment in these obligations has been approved in writing by investment counsel employed by the board, which counsel shall be a national or state bank or trust company authorized to do a trust business in the State of Illinois, or an investment advisor qualified under the Federal Investment Advisors Act of 1940 and registered under the Illinois Securities Act of 1953;

(f) The system making the investment shall have at least \$5,000,000 of net assets.

6. Bonds, debentures or other evidences of indebtedness (including railroad equipment trust certificates) of any corporation created or existing under the laws of the United States or any state, district or territory thereof.

7. Common and preferred stocks which are legal investments for trust funds under the laws of this state, provided:

(a) the stocks are listed on a national securities exchange as defined in the Federal Securities Exchange Act;

(b) the stocks are issued or guaranteed by a corporation credited or existing under the laws of the United States or any state, district or territory thereof;

(c) the corporation which issued or guaranteed the stock is not in arrears on payment of dividends on its preferred stock;

(d) the corporation which issued or guaranteed the stock has paid a cash dividend on its common stock in each of the 10 years next preceding the date on which the stock is to be purchased, and its net earnings available for dividends on common stock during this period were at least equal to the amount of the dividends paid on such stock;

(e) the total book value of all stocks owned by the System shall not exceed 40 percent of the total book value of all investments of the System;

(f) the book value of stock investments in any one corporation shall not exceed 5 percent of the maximum amount which may be invested in stocks, determined as of the date of the investment, and the investments in the stock of any one

corporation shall not exceed 1 percent of the total outstanding stock of such corporation;

(g) the investment in stock is approved by at least  $\frac{2}{3}$  of the members of the board after having been recommended in writing by a national or state bank or trust company which is authorized to do a trust business in the State of Illinois and is employed by the board as agent or corporate trustee; and

(h) the preferred stocks must be issued or guaranteed by a corporation which, for a period of 5 fiscal years next preceding the date of investment for which the necessary statistical data are available in published fiscal year statements, had average annual net income plus average annual fixed charges at least equal to 2 times the sum of its average annual fixed charges, and which, for the last 2 fiscal years of such period, had annual net income plus annual fixed charges of at least  $1\frac{1}{2}$  times the sum of its dividend requirements for preferred stock and its fixed charges.

8. Obligations of the International Bank for Reconstruction and Development.

9. Obligations of the Inter-American Development Bank.

10. Unlisted Common Stocks (other than mutual funds) or the following types of institutions whose securities are not listed on any such securities exchange: (a) any bank which is a member of the Federal Deposit Insurance Corporation having capital funds represented by capital stock, surplus and undivided profits of at least \$20,000,000; (b) any life insurance company having capital funds represented by capital stock, special surplus funds and unassigned surplus totalling at least \$50,000,000; and (c) any fire or casualty insurance company, or a combination thereof, having capital funds represented by capital stock, net surplus and voluntary reserves of at least \$50,000,000.

For the purpose of this section, fixed charges shall mean interest on funded or unfunded debt and contingent interest charges. IPC, Sec. 16-179.

The limitations on investment of the assets of the Trust by the Board of Trustees are only to apply at the time of purchase of the particular asset and "shall not require liquidation of any investment at that time." IPC, Sec. 16-179. This would appear to preclude purchase of the prohibited types of assets, but once purchased, there can be no forced liquidation of assets.

The Board of Trustees of the plan may invest the funds of the plan in and commingle with, the investment funds under the Illinois Board of Investment, organized under IPC, Article 22A. IPC, Sec. 16-179.1. The book value of all commingled funds may not exceed the equity value of funds permitted invested under IPC, Sec. 16-179, i.e. 40% of the book value of all investments of the system.

It is a Class A misdemeanor for any trustee, member, employee or person on the Board of Trustees to:

knowingly make \*\*\* any false statement or falsifies or permits to be falsified any record of this retirement system in any attempt to defraud such system as a result of such act, or intentionally or knowingly defraud \*\*\* this retirement system in any manner \*\*\* IPC, Sec. 16-198.

#### D. JUDGES RETIREMENT SYSTEM OF ILLINOIS

##### 1. Coverage

The Judges Retirement System of the State of Illinois extends its coverage to judges of the various State courts, police magistrates, masters in chancery and civil referees of the Municipal Courts of Chicago. IPC, Sec. 18-112. It also covers any person who is paid for personal services as the administrative director appointed by the Supreme Court and who had previously been a participant in the plan. IPC, Sec. 18-108. The State courts covered by the plan are the Supreme Court, Appellate Court and Circuit Court, and the Court of Claims (to the extent that the judges of the latter are not covered by the general employees' pension plan). IPC, Sec. 18-107.

## 2. Funding

The judges covered by the plan and the State of Illinois both contribute to funding the Judges Retirement System. The covered employees are required to contribute, after 1967,  $7\frac{1}{2}\%$  of their payments of salary for the basic pension annuity. IPC, Sec. 18-133. Widows' annuities are another  $2\frac{1}{2}\%$  of each salary payment, after July 12, 1953. IPC, Sec. 19-34.

The State of Illinois is required to contribute an annual appropriation which, when combined with the employee contributions, will provide sufficient funds to :

meet the costs of maintaining this system in accordance with the following method of funding :

The State's contribution applicable to any fiscal year shall be the sum of (1) the amounts estimated to be required, on the basis of the actuarial tables adopted by the Board . . . for annuities during the year in excess of the accumulated contributions of the judges retired during the year; plus (2) the estimated expenses of administration for the year; or (3) an amount equal to the retirement annuity and widow's annuity contributions of the participants during the year and the estimated amount required to pay all annuities and expenses for the succeeding year. IPC, Sec. 18-131.

## 3. Financing

As noted *supra*, p. 36, the State Treasury is the source of funds for the Judges Retirement System of the State of Illinois, and use of these funds to pay benefits would appear compellable by writ of mandamus.

Furthermore, the State's required payments for benefits and administrative expenses of the plan are made "obligations of the State". IPC, Secs. 18-153, 18-132.

## 4. Fiduciary standards

The Board of Trustees of the Judges Retirement System of the State of Illinois are required to swear an oath that they will "diligently and honestly administer the affairs of the retirement system, and will not knowingly violate or wilfully permit to be violated any of the provisions of this Article." IPC, Sec. 18-135.

The trustees do not invest the assets of the Judges Retirement System of the State of Illinois. Rather, this function is transferred to the Illinois State Board of Investment, organized under IPC, Article 22A. IPC, Sec. 18-141.

No trustee or employee of the Board of Trustees may have any direct interest in :

income, gains or profits, of any investments made by the board, nor shall he receive any pay or emolument for services in connection with any investment. No such trustee or employee shall become an endorser or surety, or in any manner an obligor for money loaned or borrowed from the system. IPC, Sec. 18-159.

Violation of this prohibition against direct conflict of interest constitutes a "petty offense."<sup>12</sup>

It is a Class A misdemeanor for an individual to knowingly make any "false statement, or falsify or permit . . . to be falsified any record of this system, in any attempt to defraud." IPC, Sec. 18-162.

<sup>12</sup> "Petty Offense" is defined by the Illinois criminal laws as the least serious of criminal offenses, usually punished by a "period of conditional discharge" and/or a fine. 38 Ill. Rev. Stat., Secs. 1005-5-1; 1005-3-3(f).

## E. STATE EMPLOYEES PENSION PLAN

*1. Coverage*

The State Employees' Retirement System of the State of Illinois extends coverage to any "regular classified or unclassified officer or employee" of the State, paid to furnish personal services. The statute defines employment in terms of the elements of receipt of a salary, in return for personal services, rendered to the State, paid on a warrant of the Department or from an elected or duly appointed officer of the State, drawn by the State Comptroller upon the State Treasurer, in a position normally requiring at least 900 work hours per year. IPC, Sec. 14-108. This plan includes "a person elected to a State office or as a clerk of the Appellate Court . . ." as long as that individual so elects membership in the plan. IPC, Sec. 14-143.

The term "Department" used above is defined to include:

Any department, institution, board, commission, officer, court or any agency of the State receiving State appropriations and having power to certify payrolls to the State Comptroller authorizing payments of salary or wages against such appropriations, or against trust funds held by the State Treasurer, or any State employees not for profit association or organization herein referred to as a State employees association which has as its membership limited to State employees and members of a State retirement system so long as such State employees association makes contributions on behalf of its employees the amounts required by this Article to be made by employees and by the State as determined by the board of trustees, except those departments included under the term "Employer" in the State Universities Retirement System. IPC, Sec. 14-107.

Specifically excluded from the term "employee" for purposes of the State Employees' Retirement System are members of the State Legislature, incumbents of offices elected by vote of less than the entire State (and including clerks of the Appellate Court within the plans), appointees of the Governor under the Civil Administrative Code, unless the individual elects coverage, Judges of a court of record or persons receiving pensions under the Judges Retirement System, persons covered by or eligible for coverage under the Teachers' Retirement System, the State Universities' System, or the Judges Retirement System of Illinois, or employees of municipalities or subdivisions of the State. IPC, Sec. 14-108.

*2. Funding*

Both the State and the covered employees contribute to the funding of the Employees' Retirement System. The employees covered contribute  $6\frac{1}{2}\%$  of earnable compensation after 1971. Policepersons and firepersons contribute at a rate of 7%. An additional contribution is required for survivors' benefits ( $\frac{1}{2}\%$ ) and for service retirement allowances ( $2\frac{1}{2}\%$ ). IPC, Sec. 14-171.

The State contributes an amount annually which, together with members contributions, interest income from investments and other income of the system, is sufficient to meet the costs of "maintaining and administering the system on a funded basis in accordance with actuarial reserve requirements." IPC, Sec. 14-169. The State contributions must equal at least the annual average of the projected expenditures over the next 10 years for purposes of:

- (1) State annuity;
- (2) prior service annuity;
- (3) the part of reversionary annuity derived from other than accumulated contributions;
- (4) death benefit except accumulated contributions or any part thereof;
- (5) survivors annuity;
- (6) ordinary disability benefit;
- (7) accidental disability benefit;
- (8) acci-

dental death benefit except that part consisting of accumulated contributions; (9) widow's annuity except that part consisting of employee contributions therefor, and (10) administration expense \* \* \*. IPC, Sec. 14-169.

The computation of annual expenditure shall also consider factors of probable future retirements, death, interest earnings, and employment turnover. Furthermore, excess contributions will be credited to a contingent reserve for accrued and accruing liabilities of the system. IPC, Sec. 14-169.

The annual contributions from both the trust funds and Federal moneys are the aforementioned amounts, less expenditures for administration, computed in ratio of the total members to be paid benefits to the total covered for forthcoming years. These figures may not be varied from the statutory computations.<sup>13</sup>

With regard to the Illinois State Toll Highway Commission, and its employees, contributions by the State are made by the Commission in an amount to provide actuarial reserves and full funded requirements. IPC, Sec. 14-169.

### 3. *Financing*

As noted *supra*, page 36, the State Treasury is the source of funds for the Employees' Retirement System and use of these funds to pay benefits would appear compellable by writ of mandamus.

Furthermore, the State's required payments for annuities, benefits, allowances and expenses of administration are "obligations of the State." IPC, Sec. 14-170.

### 4. *Fiduciary standards*

The Trustees of the system must take an oath not to "knowingly violate or wilfully permit the violation of any of the provisions of law applicable to the system," and that they will "diligently and honestly administer the affairs of the system." IPC, Sec. 14-172.

The investment function with regard to funds of the Employees' Retirement System is conducted by the Illinois State Board of Investment, not the Board of Trustees of the System. IPC, Sec. 14-179.

Furthermore, no trustee or employee of the Board is permitted to have any direct interest in:

the income, gains or profits of any investments made by the board, nor shall any such person receive any pay or emolument for services in connection with any investment. No trustee or employee of the board shall become an endorser or surety or in any manner an obligor for money loaned by or borrowed from the system. IPC, Sec. 14-194.

Violations of these prohibitions constitute petty offenses.

It is a Class A misdemeanor for any person to knowingly make a false statement or falsify a record of the Employees' Retirement System with intent to defraud the System. IPC, Sec. 14-198.

## II. *The Plans Applicable to Employees of Local Governments*

The State of Illinois has established a number of pension plans for employees of the local governmental units as well as plans for State employees. Furthermore, it would appear that there is one legal non-statutory pension plan for local government units: the plan of the Chicago Transit Authority. This second part of the report will discuss these plans and their requirements with regard to coverage, funding, financing, and fiduciary standards. Again, where there is no abrogat-

<sup>13</sup> *Illinois State Employees' Association v. McCarter*, 9 Ill. App. 3d 764 (1973).

ing or amendatory statute, the general State law on fiduciary standards and criminal sanctions enforcing such laws would appear applicable.<sup>14</sup>

#### A. STATUTORY PLANS FOR LOCAL EMPLOYEES

Under the Illinois Pension Code there are thirteen major pension programs for local employees: the Policemen's Pension Fund (Municipalities 500,000 and Under); the Firemen's Annuity and Benefit Fund (Cities over 500,000); the Firemen's Pension Fund (Municipalities 500,000 and Under); the Policemen's Annuity and Benefit Fund (Cities 500,000 and Over); the Illinois Municipal Retirement Fund; the Municipal Employees', Officers', and Officials' Annuity and Benefit Fund (Cities over 500,000 Inhabitants); the County Employees' and Officers' Annuity and Benefit Fund (Counties over 500,000 Inhabitants); the Forest Preserve District Employees' Annuity and Benefit Fund; the Laborers' and Retirement Board Employees' Annuity and Benefit Fund (Cities over 500,000 Inhabitants); the Park Employees' and Retirement Board Employees' Annuity and Benefit Fund (Cities over 500,000); the Sanitary District Employees' and Trustees' Annuity and Benefit Fund; the Public School Teachers' Pension and Retirement Fund (Cities over 500,000 Inhabitants); and the Closed Funds (for House of Correction Employees and Public Library Employees).

##### 1. *Policemen's Pension Fund (municipalities 500,000 and under)*

###### a. *Coverage*

The Policemen's Pension Fund covers all "policemen" employed by municipalities, including "any city, village, or incorporated town of not less than 5,000 nor more than 500,000 inhabitants," as determined from the latest United States census survey. Towns of less than 5,000 inhabitants may bring their policemen under this fund by referendum.

The definition of "policeman" for the purposes of the Policemen's Pension Fund is any person who:

(a) is heretofore or hereafter appointed to the police force of a police department and sworn and commissioned to perform police duties; and (b) is found upon examination of a duly licensed physician or physicians selected by the Board to be physically and mentally fit to perform the duties of a policeman; and (c) within 3 months after receiving his first appointment, and if reappointed, within 3 months thereafter, makes written application to the board to come under the provisions of this Article. IPC, Sec. 3-106.

The definition of policeman notwithstanding, certain individuals may not become members of the Policemen's Pension Fund or be covered thereunder. Included therein are certain policemen who, as of July 1, 1963, are at least 36 years of age and have served as policemen for at least 25 years, as well as:

Part-time policemen, special policemen, night watchmen, temporary employees, traffic guards or so-called auxiliary policemen specially appointed to aid or direct traffic at or near schools or public functions, or to aid in civil defense, municipal parking lot attendants, clerks or other civilian employees of a police department who perform clerical duties exclusively \* \* \* IPC, Sec. 3-109.

###### b. *Funding*

Policemen contributing to the Policemen's Pension Fund must contribute 7½% of their salary after 1971. "Salary" for purposes of plan

<sup>14</sup> See *supra*, fns. 4 and 5, at 36.

contributions, includes only the annual salaries, and excludes overtime pay, holiday pay, bonus or merit pay. IPC, Sec. 3-125(2).

The local governments whose policemen are covered by the Policemen's Pension Fund are required by the State to contribute to funding of the fund. Their contributions are in an amount which, when added to the members contributions and all other receipts of the fund, will meet the "annual requirements of the police pension fund." IPC, Sec. 3-125. A reserve is also required to be established by the Board of Trustees of the Policemen's Pension Fund in an amount not less than \$10,000 for each policeman and beneficiary in each municipality. This is to be from municipality contributions as well as employee contributions.

*c. Financing*

The city council or board of trustees of the municipality whose employees are covered by the Policemen's Pension Fund must finance their contributions by an annual property tax. IPC, Sec. 3-125. The tax must be sufficient to fund the plan's annual requirements and to provide the required reserve fund. IPC, Sec. 3-125. The tax shall be levied and collected in the same manner, and additional to, any other general taxes of the municipality. IPC, Sec. 3-125.

*d. Fiduciary standards*

The Trustees of the Board of Trustees of the Policemen's Pension Fund are limited in their ability to invest the assets of the fund. They may invest such assets only in:

Interest bearing bonds or tax anticipation warrants of the United States, of the State of Illinois, or of any county, township or municipal corporation of the State of Illinois; insured withdrawable capital accounts of State chartered savings and loan associations; insured withdrawable capital accounts of federal chartered federal savings and loan associations if the withdrawable capital accounts are insured by the Federal Savings and Loan Insurance Corporation; and in savings accounts or certificates of deposit of a national or State bank. All securities shall be deposited with the treasurer of the municipality, and be subject to the order of the Board. Interest on such investments shall be credited to the account of the pension fund. IPC, Sec. 3-135.

No other specific provisions of the applicable section of the Illinois Pension Code regulate the fiduciary standards of the Board of Trustees of the Policemen's Pension Fund.

*2. Firemen's Pension Fund (municipalities 500,000 and under)*

*a. Coverage*

The employees of the full-time, paid fire department of any city, township, village, or incorporated town of not less than 5,000 nor more than 500,000 inhabitants, by the latest United States census, may be covered by the Firemen's Pension Fund. Electing towns of less than 5,000 inhabitants but with a paid full-time fire department may also be covered, as may be firemen of any fire protection district with a full-time fire department.

The term "firemen" for the purposes of the Firemen's Pension Fund, is defined to include:

(a) Any person who on July 11, 1919, was entitled to benefits of "An Act to create a Board of Trustees of the firemen's pension fund; to provide and distribute such fund for the pensioning of disabled firemen, and the widows and minor children of deceased firemen. . . .

(b) In cities which have adopted "An Act to regulate the civil service of cities", approved March 20, 1895, as amended, any person who has been or may be appointed to any position classified by the civil service commission of such city, in the fire service of such city; and

(c) In municipalities which have not adopted the Civil Service Act . . . any person who has been or may be appointed to any fulltime position in the fire department or service of such municipality; and

(d) Any person who would have been included as a fireman under sub-paragraphs (b) or (c) above except that he served as a *de facto* and not as a *de jure* fireman. IPC, Sec. 4-106.

#### *b. Funding*

Both the municipality and the covered firemen contribute to the funding of the Firemen's Pension Fund. The covered employees are required to contribute 5% of their salary for years after 1947. IPC, Sec. 4-124.

The applicable municipality is required to contribute an amount which, in conjunction with other receipts of the fund (including fines for violations of the fire ordinances of the municipality), will suffice to:

(1) meet the annual requirements of the pension fund; and

(2) provide actuarial reserves for the annuities and benefits to be earned by the firemen during the year, and said actuarial reserve requirements shall be computed at a rate of not less than 17.5% of the salaries and wages to be paid to the firemen for the ensuing year; and

(3) Provide for the amortization of the unfunded accrued liabilities, including liabilities on account of pensions and benefits in force at such date, as determined as of December 31, 1966, by the Pension Division of the Department of Insurance . . . over a period of 40 years from such date using an interest rate assumption of 4% per annum. IPC, Sec. 4-118.

#### *c. Financing*

The municipal contributions to the plan's fund are financed by a compulsory property tax on all taxable property within the jurisdiction. The tax must be levied and collected in addition to other general taxes and in the same manner as other general taxes. IPC, Sec. 4-118.

#### *d. Fiduciary standards*

The monies collected by the special tax levied by the city are to be kept in a segregated fund. IPC, Sec. 4-118. Furthermore, the Board of Trustees of the Firemen's Pension Fund are restricted in their ability to invest the fund's assets (reserves), to:

interest bearing bonds of the United States, or of the State of Illinois, or of any county, city, township, village, incorporated town, municipal corporation or school district in this State; or in tax anticipation warrants issued by any city, township, village, incorporated town, or fire protection district included within this Article; insured withdrawable capital accounts of State chartered savings and loan associations; insured withdrawable capital accounts of federal chartered federal savings and loan associations if the withdrawable capital accounts are insured by the Federal Savings and Loan Insurance Corporation; and in savings accounts or certificates of deposit of a national or State bank. Bonds purchased hereunder shall be registered in the name of the Board. IPC, Sec. 4-128.

### *3. Policemen's Annuity and Benefit Fund (cities over 500,000)*

#### *a. Coverage*

The Policemen's Annuity and Benefit Fund (PABF) covers policemen employed by cities of 500,000 or more inhabitants. IPC, Sec. 5-101. The Code also defines "policemen," for the purposes of the PABF, to include:

(a) An employee in the regularly constituted police department of a city appointed and sworn or designated by law as a peace officer with the title of policeman, policewoman, chief surgeon, police surgeon, police dog catcher, police kennelman, police matron, and members of the police force of the police department; and

(b) An employee as defined in sub-paragraph (a) immediately above who is serving in the regularly constituted police department of a city in a rank or position which is exempt from civil service and who, immediately prior to the time he began such service, was a participant in the Policemen's Annuity and Benefit Fund Act; and

(c) Any policeman of a park district transferred to the employment of a city under the "Exchange of Functions Act of 1957." IPC, Sec. 5-109.

#### *b. Funding*

Both the cities involved and the employees covered under the PABF must contribute to its funding. The covered employees are required to contribute 7% of their annual salaries to the fund for age and salary annuities. IPC, Sec. 5-169. They must, furthermore, contribute an additional 1% of their salaries if they desire widow's or widower's annuities. IPC, Sec. 5-170. After 1962, to defray the cost of ordinary death benefits each policeman must, in addition, contribute \$2.50 per month of active duty to the fund. IPC, Sec. 5-171.

The cities must contribute 9 5/7% of the salaries of the employees covered by the plan. IPC, Sec. 5-169. Furthermore, the cities must contribute 2% of the employees' salaries to cover elected employees' choices for survivors' benefits. IPC, Sec. 5-170. The city, in addition, shall contribute an annual sum of \$224,000 to defray the costs of ordinary death benefits. IPC, Sec. 5-170. When a policeman receives duty disability benefits the city must contribute, in lieu of salary deductions, the equivalent amount. IPC, Sec. 5-172. Similar contributions are required for ordinary contributions of policemen receiving ordinary disability benefits. IPC, Sec. 5-173. The maximum a city under the fund may be required to contribute is \$9,700,000 times the proper factor for that year (the factor for 1974 was 1.90, and for 1975 it is 1.97). IPC, Sec. 5-168.

#### *c. Financing*

The cities covered by the PABF must levy an annual general property tax to pay the amounts required by the Illinois Pension Code. IPC, Sec. 5-168. The tax must be general, and must be additional and levied and collected as other general taxes. IPC, Sec. 5-168.

#### *d. Fiduciary Standards*

The Board of Trustees of the Policeman's Annuity and Benefit Fund are restricted in their investment of funds of the pension. They may only invest in certain statutorily delineated funds, to wit:

(a) Interest bearing bonds, notes or bills of the United States or obligations fully guaranteed as to the payment of both principal and interest by the United States, or interest bearing bonds of the State of Illinois, or of any county, city, village, incorporated town, municipal corporation or school district in this state.

(b) Tax anticipation warrants issued by the State of Illinois, or the city in which such annuity and benefit fund is operating, or of the county in which such city is located, or of any school district within such city, or of any annuity and benefit fund, annuity and retirement fund, or any pension fund now or hereafter in operation in such city.

(c) Revenue bonds issued by the University of Illinois, or any school, department or division thereof, or in any university owned by the State of Illinois, or any school department or division thereof, provided that the investment in any single issue of such bonds shall not exceed 15% of such issue, nor shall the total amount of bonds of this type exceed, at any time, 5% of the total investments of the fund.

(d) Bonds or other evidences of indebtedness of any public utility corporation, and bonds or other evidences of indebtedness of any industrial or financial corporation including certificates of deposit issued by a national or State bank or trust company authorized to do business in the State of Illinois, provided interest has been paid by the corporation on its indebtedness for at least 5 years last past. Not more than 1% of total investments shall consist of any one issue of these bonds or certificates of deposit. Such securities other than certificates of deposit shall be of corporations in one of the states of the United States of America.

(e) Interest bearing general obligations, payable from unlimited ad valorem taxes, of any other state in the United States, or the political subdivisions of any such state having a population over 30,000 as shown by the latest official census of the United States Census Bureau, which has not defaulted in the payment of principal or interest on any of such general obligations for more than 30 days in the 10 years next preceding date of such investment.

(f) Obligations of the twelve Federal Land Banks and the Inter-American Development Bank.

(g) Bonds of the International Bank for Reconstruction and Development which are direct and unsecured obligations of the Bank, provided that the investment in any one issue of these bonds shall not exceed 1% thereof, and that the total investments in such bonds shall be limited to 5% of the total amount of investments owned by the fund.

(h) Direct obligations of the State of Israel for the payment of money, or obligations for the payment of money which are guaranteed as to the payment of principal and interest by the State of Israel, on the following conditions:

1. The total investments in such obligations shall not exceed 5% of the book value of the aggregate investments owned by the fund;

2. The State of Israel shall not be in default in the payment of principal or interest on any of its direct general obligations on the date of such investment;

3. The bonds and interest thereon shall be payable in currency of the United States;

4. The bonds shall contain an option for the redemption thereof after 90 days from date of purchase;

5. The investment in these obligations has been approved in writing by investment counsel employed by the board, which counsel shall be a national or state bank or trust company authorized to do a trust business in the State of Illinois, or an investment advisor qualified under the Federal Investment Advisors Act of 1940 and registered under the Illinois Securities Act of 1953;

6. The fund making the investment shall have at least \$5,000,000 of net present assets.

(i) Common or preferred stocks, which are legal investments for trust funds under laws of the State of Illinois, subject to the following conditions and limitations:

(a) The stocks are listed on a national securities exchange as defined in the Federal Securities Exchange Act;

(b) The stocks are issued or guaranteed by a corporation created or existing under the laws of the United States, or any State, district or territory thereof;

(c) The corporation which issued or guaranteed the stock has paid a cash dividend on its common stock in each of the 10 years next preceding the date on which the stock is to be purchased, and its net earnings available for dividends on common stock during this period was at least equal to the amount of the dividends paid on such stock;

(d) The corporation which issued or guaranteed the stock is not in arrears on payment of dividends on its preferred stock;

(e) The total book value of all stocks owned by the Retirement Board shall not exceed 10% of the total book value of all investments, determined as of the date of any proposed investment in common stock;

(f) The book value of stock investments in any one corporation shall not exceed 5% of the maximum amount which may be invested in common stocks, determined as of the date of the investment, and the investment in the stock of any one corporation shall not exceed 1% of the total outstanding stock of such corporation;

(g) The investment in common stock is approved by at least 4 of the 7 members of the board after having been recommended in writing by investment counsel employed by the board, which counsel shall be a national or State bank or trust company authorized to do trust business in the State of Illinois, or an investment advisor qualified under the Federal Investment Advisors Act of 1940 and registered under the Illinois Securities Act of 1953—or licensed and recognized as investment counsel under other appropriate laws of the United States or the State

of Illinois, if such Act of 1940 or the Illinois Securities Law should be repealed or be no longer applicable. IPC, Sec. 5-187.

Furthermore, no Trustee of the Board of Trustees may, nor may any other employee or person officially connected with the Board, receive "any commission on account of any investment made by the board." IPC, Sec. 5-221.

*4. Firemen's Annuity and Benefit Fund (Cities over 500,000)*

*a. Coverage*

The Firemen's Annuity and Benefit Fund (FABF) extends its coverage to the firemen employed by cities of more than 500,000 inhabitants. The Illinois Pension Code also defines "firemen," for purposes of the FABF, as any person who :

(a) was, is, or shall be employed by a city in its fire service as a fireman, fire engineer, marine engineer, or fire pilot, and whose duty is to participate in the work of controlling and extinguishing fire at the location of any such fire, whether or not he is assigned to fire service other than the actual extinguishing of fire; or

(b) is employed in the fire service of a city on the effective date, whose duty shall not be as hereinbefore stated, but who shall then be a contributor to, participant in, or beneficiary of any firemen's pension fund in operation by authority of law in such city on said date, unless he applies to the retirement board, within 90 days from the effective date, for exemption from the provisions of this Article. Any person who would have been entitled on July 1, 1931 to membership in this fund by reason of the definition of the word "fireman" contained in "An Act to provide for a firemen's pension fund and to create a board of trustees to administer said fund in cities having a population exceeding two hundred thousand (200,000) inhabitants", filed July 14, 1917, as amended, who has not filed with the board prior to July 1, 1941, a written application to be a member shall not be a fireman within the meaning of this Article.

*b. Funding*

Both the cities and the covered participants contribute to the funding of the FABF. The covered participants contribute  $7\frac{1}{8}\%$  of each salary payment for the ordinary retirement and life benefits. IPC, Sec. 6-166. For widow's annuities an additional 1% must be contributed. IPC, Sec. 6-167. An additional \$2.50 per month must be contributed for ordinary death benefits. IPC, Sec. 6-168.

The municipality must contribute  $8\frac{1}{2}\%$  of each salary payment to covered employees to pay for the basic annuities. IPC, Sec. 6-166. In addition, another 2% of each salary payment must be contributed to pay for widow's annuities. IPC, Sec. 6-167. The city is required to contribute an additional \$142,000 for each tax year for death benefits. IPC, Sec. 6-168. Additional contributions in lieu of salary deductions are also required where the employee is receiving duty disability benefits. IPC, Sec. 6-169. Where the firemen are receiving disability benefits, the city will still make its usual contributions. IPC, Sec. 6-170. The city also contributes for administrative costs and other required sums. IPC, Sec. 6-172. The amount which the city must provide shall not exceed .0863 of the value of the assessable property of the city, and may not be required to exceed the contributions of the employees to the fund for the calendar year two years prior, multiplied by 2.23. IPC, Sec. 6-165.

*c. Financing*

The city must raise its required contributions by a general property tax on all taxable property within its jurisdiction. The tax must be collected as other general property taxes, but must be levied separately. IPC, Sec. 6-165.

*d. Fiduciary standards*

The Trustees of the Board of Trustees of the FABF are restricted in their investments to certain listed types of investments, to wit:

(a) Interest bearing full faith and credit bonds of the United States, the State of Illinois or of any county, city, village, incorporated town, municipal corporation or school district in this state.

(b) Interest bearing water debentures of the city in which the fund is operating.

(c) Tax anticipation warrants of the city in which the fund is operating.

(d) Commercial bank time certificates of deposit.

(e) Bonds or other evidence of indebtedness issued or guaranteed by any railroad or in its equipment trust certificates, public utility, financial or industrial corporation organized under the laws of the United States, any State or States of the United States or the District of Columbia, provided they are rated AA or better by any two nationally recognized security concerns, the total of which investments shall not exceed 50% of the total book value of the investments held by the Fund at the time of purchase and provided, further, that not more than 2% of the total book value of the investments of the Fund shall be invested in any one issue of the investments described in this paragraph, at the time of purchase.

(f) Bonds of the International Bank for Reconstruction and Development which are direct and unsecured obligations of the Bank, provided that the investment in any one issue of these bonds shall not exceed 1% thereof, and that the total investments in such bonds shall be limited to 5% of the total amount of investments owned by the fund.

(g) Obligations of the twelve Federal Land Banks and the Inter-American Development Bank.

(h) Direct obligations of the State of Israel for the payment of money, or obligations for the payment of money which are guaranteed as to the payment of principal and interest by the State of Israel, on the following conditions:

1. The total investments in such obligations shall not exceed 5% of book value of the aggregate investments owned by the fund;

2. The State of Israel shall not be in default in the payment of principal or interest on any of its direct general obligations on the date of such investment;

3. The bonds and interest thereon shall be payable in currency of the United States;

4. The bonds shall contain an option for the redemption thereof after 90 days from the date of purchase;

5. The investment in these obligations has been approved in writing by investment counsel employed by the Board, when counsel shall be a national or state bank or trust company authorized to do a trust business in the State of Illinois, or an investment advisor qualified under the Federal Investment Advisors Act of 1940 and registered under the Illinois Securities Act of 1953;

6. The fund making the investment shall have at least \$5,000,000 of net present assets.

Any bond or registerable evidence of indebtedness purchased by the Board shall be registered in the name of the Board. Every tax anticipation warrant and non-registerable evidence of indebtedness purchased by the Board shall be clearly marked to evidence its ownership by the Board. The Board may sell any of the securities belonging to the Fund and borrow money upon such securities as collateral whenever, in its judgment, such action is necessary to meet the cash requirements of the Fund. IPC, Sec. 6-183.

Furthermore, no member of the Board of Trustees or person officially connected with the Board may accept a commission on account of any investment of FADF funds. IPC, Sec. 6-215.

*5. Illinois Municipal Retirement Fund*

*a. Coverage*

The Illinois Municipal Retirement Fund (IMRF) extends the coverage of a State-regulated pension system to any employee of any municipality within the State of Illinois. The statutes define "municipality" to include:

A city, village, incorporated town, county, township; and any school, park, sanitary, road, forest preserve, water, fire protection, public health, river con-

servancy, mosquito abatement, tuberculosis sanitarium, Class II junior college district or other local district with general continuous power to levy taxes on the property within such district; now existing or hereafter created within the State \* \* \*. IPC, Sec. 7-105.

It also defines "employee", for the purposes of the IMRF, to mean:

(1) Any person who:

(a) 1. Receives earnings as payment for the performance of personal services or official duties out of the general fund of a municipality, or out of any special fund or funds controlled by a municipality, or by an instrumentality thereof, or participating instrumentality, including, in counties, the fees or earnings of any county fee office; and

2. Under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee with a municipality, or of any instrumentality thereof, or a participating instrumentality, including aldermen, county supervisors and other persons (excepting those employed as independent contractors) who are paid compensation, fees, allowances or other emolument for official duties, and, in counties, the several county fee offices.

(b) Serves as a township treasurer appointed under "the School Code", approved March 18, 1931, as heretofore or hereafter amended, and who receives for such services regular compensation as distinguished from per diem compensation, and any regular employee in the office of any township treasurer whether or not his earnings are paid from the income of the permanent township fund or from funds subject to distribution to the several school districts and parts of school districts as provided in "The School Code", or from both such sources.

(c) Holds an elective office in a municipality, instrumentality thereof or participating instrumentality.

(2) "Employee" does not include persons who:

(a) Are eligible for inclusion under any of the following laws:

1. "An Act in relation to an Illinois State Teachers' Pension and Retirement Fund", approved May 27, 1915, as amended;

2. Articles 15 and 16 of this Code.

However, such persons shall be included as employees to the extent of earnings, that are not eligible for inclusion under the foregoing laws for services not of an instructional nature of any kind.

(b) Are designed by the governing body of a municipality in which a pension fund is required by law to be established for policemen or firemen respectively, as performing police or fire protection duties, except, that when such persons are the heads of the police or fire department and are not eligible to be included within any such pension fund, they shall be included within this Article: provided, that such persons shall not be excluded to the extent of concurrent service and earnings not designated as being for police or fire protection duties.

(3) All persons, including, without limitation, public defenders and probation officers, who receive earnings from general or special funds of a county for performance of personal services or official duties within the territorial limits of the county, are employees of the county (unless excluded by paragraph (2) of this section) notwithstanding that they may be appointed by and are subject to direction of a person or persons other than a county board or a county officer. It is hereby established that an employer-employee relationship under the usual common law rules exists between such employees and the county paying their salaries by reason of the fact that the county boards fix their rates of compensation, appropriate funds for payment of their earnings and otherwise exercise control over them. This finding and this amendatory Act shall apply to all such employees from the date of appointment whether such date is prior to or after the effective date of this amendatory Act and is intended to clarify existing law pertaining to their status as participating employees in the Fund. IPC, Sec. 7-109.

The IMRF extends to many municipal organizations with population of under 1,000,000, specifically:

1. Except as to the municipalities and instrumentalities thereof specifically excluded under this Article: (a) Every county, and (b) all cities, villages and incorporated towns having a population in excess of 5,000 inhabitants as determined by the last preceding decennial or subsequent federal census, shall be subject to this Article following publication of the census by the Bureau of the Census, provided that if any city, village or incorporated town attains a population over 5,000 inhabitants, after previously having provided social security

coverage for its employees under the Social Security Enabling Act, participating under this Article by any such municipality shall not be mandatory but shall be governed by the method prescribed in the following provisions of this Section.

2. School districts other than those specifically excluded under this Article, shall be subject to this Article, without election, with respect to all employees thereof.

3. Towns and all other bodies politic and corporate which are formed by vote of, or are subject to control by, the electors in towns and are located in towns which are not participating municipalities on the effective date of this Act, by election pursuant to Section 132.1 of this Article.

4. Any other municipality (together with its instrumentalities), other than those specifically excluded from participation, and those described in paragraph 3 above, which elects to be included either by referendum in the manner hereinafter provided or by the adoption of a resolution or ordinance by its governing body. A copy of such resolution or ordinance duly authenticated and certified by the clerk of the municipality or other appropriate official of its governing body shall constitute the required notice to the board of such action.

5. Each municipality shall begin participation as follows:

A. Municipalities required to participate under subparagraph 1 of this paragraph (a) shall begin on the January 1st following publication of the census provided the publication date is on or before October 1st. If after October 1st participation shall begin on the second January 1st after publication. IPC, Sec. 7-182.

If they apply for coverage, certain other municipal organizations may be covered by the IMRF:

- i. Township School District Trustees.
- ii. Multiple County and Consolidated Health Departments created under "An Act in relation to the establishment and maintenance of county and multiple-county public health departments", approved July 9, 1943.
- iii. Public Building Commissions created under the Public Building Commission Act", approved July 5, 1955, and located in counties of less than 1,000,000 inhabitants.
- iv. A consolidated or cooperative Public Library System created under "An Act to provide a program of state grants to aid in the establishment and development of a network of public library systems and making appropriations therefor", approved August 17, 1965.
- v. Regional Planning Commissions created under "An Act to provide for regional planning and for the creation, organization and powers of regional planning commissions", approved June 25, 1929, and serving counties, all of which have less than 1,000,000 inhabitants.
- vi. Local Public Housing Authorities created under the "Housing Authorities Act", approved March 19, 1934, located in counties of less than 1,000,000 inhabitants.
- vii. Illinois Municipal League.
- viii. Northeastern Illinois Metropolitan Area Planning Commission.
- ix. Southwestern Illinois Metropolitan Area Planning Commission.
- x. Illinois Association of Park Districts.
- xi. Illinois Supervisors, County Commissioners and Superintendents of Highways Association.
- xii. Tri-City Regional Port District.
- xiii. An association, or not-for-profit corporation, membership in which is authorized under Section 17 of Article XIII of "An Act to revise the law in relation to township organization", approved March 4, 1874, as amended.
- xiv. Drainage Districts operating under the "Illinois Drainage Code", approved June 29, 1955.
- xv. Local mass transit districts created under the "Local Mass Transit District Act" approved July 21, 1959.

#### *b. Funding*

Both the participating employees and the municipal governments covered by the Illinois Municipal Retirement Fund contribute to the support of the Fund. The covered employees contribute a base amount of  $3\frac{3}{4}\%$  of earnings for retirement annuity purposes. Additional contributions may be made of up to 10% of earnings. Survivor contributions for such benefits are at a rate of  $\frac{3}{4}\%$ . IPC, Sec. 7-173. Each

sheriffs' law enforcement employee must make an additional 1% contribution. IPC, Sec. 7-173.1.

The contributions of the municipal organizations vary, depending upon certain circumstances. The municipality must contribute an amount equal to the basic and additional contributions of the employees. IPC, Sec. 7-172(a). The municipalities must contribute for covered employees who are not participating in amounts required by the Social Security Enabling Act and necessary administrative expenses. IPC, Sec. 7-172(a). If the municipality has no participating employees with current earnings, it must contribute an amount sufficient to amortize over 20 years any negative balance in its municipality reserve resulting from a year's award of benefits. IPC, Sec. 7-172(a). The municipalities must also contribute at a "municipality contribution rate" determined annually as the sum of:

1. The percentage of earnings of all the participating employees of all participating municipalities and participating instrumentalities which, if paid over the entire period of their service, will be sufficient when combined with all employee contributions available for the payment of benefits, to provide all annuities and the contributions required by the provisions of the Social Security Enabling Act for participating employees, such percentage to be known as the normal cost rate;

2. The percentage of earnings of the participating employees of each participating municipality and participating instrumentalities necessary to adjust for the difference between the present value of all benefits, excluding temporary and total and permanent disability and death benefits, to be provided for its participating employees and the sum of its accumulated municipality contributions and the accumulated employee contributions and the present value of expected future employee and municipality contributions pursuant to subparagraph 1 of this paragraph (b). This adjustment shall be spread over the remainder of the period of 40 years from the first of the year following the date of determination;

3. The percentage of earnings of the participating employees of all municipalities and participating instrumentalities necessary to provide the present value of all temporary and total and permanent disability benefits granted during the most recent year for which information is available;

4. The percentage of earnings of the participating employees of all participating municipalities and participating instrumentalities necessary to provide the present value of the net single sum death benefits expected to become payable from the reserve established under Section 7-206 during the year for which this rate is fixed;

5. The percentage of earnings necessary to provide the amount required to provide that proportion of the administrative expenses of the fund, excluding that attributable to covered employees who are not participating employees, and the pro rata share of the total expenses of the State Agency, as determined by the State Agency, applicable to such participating employees, for the year, adjusted for any surplus or deficiency existing as of the end of the previous year, which the number of employees in the participating municipality or the participating instrumentality as of the beginning of the year is of the total number of employees then in all participating municipalities and participating instrumentalities;

6. The percentage of earnings necessary to meet any deficiency arising in the Terminated Municipality Reserve. IPC, Sec. 7-172.

The municipalities which employ persons making contributions as sheriffs' employees must make an additional contribution of 8% of their ordinary municipal rate. IPC, Sec. 7-172(c).

#### *c. Financing*

Municipalities covered by IMRF must "appropriate an amount sufficient to provide the current municipality contributions." IPC, Sec. 7-171.<sup>15</sup> These amounts may be raised by a property tax. IPC, Sec.

<sup>15</sup>This has been held to be a matter of discretion, not disturbed by the courts unless a clear abuse of discretion is shown. *People ex rel. Sweet v. Central Illinois Public Service Co.*, 268 N.E. 2d 404 (Ill. Sup. Ct., 1971).

7-171(b). A participating county which is also part of a multi-county health department under "An Act in relation to the establishment and maintenance of county and multiple-county public health departments" shall also appropriate sufficient funds for health department contributions. IPC, Sec. 7-171(c). All taxes hereunder are levied and collected additionally to and in the same manner as general property taxes. IPC, Sec. 7-171(d).

*d. Fiduciary standards*

The Board of Trustees of the IMRF is restricted in its ability to invest plan assets. They may only invest in statutorily permitted assets:

1. Bonds, notes or other general obligations of the United States Government, and obligations of which both the principal and interest are guaranteed unconditionally by the United States Government;
2. Bonds or notes of the State of Illinois;
3. Bonds or other evidences of indebtedness which are general obligations of any county, city, town, village, school district, sanitary district, park district, board of education, or of any political subdivision or municipal corporation of the State of Illinois;
4. Bonds or notes which are general obligations of any other state in the United States, or of any political subdivision thereof, provided each subdivision had a population as shown by the last Federal Census preceding such investment of not less than 30,000 inhabitants, and provided that such state or political subdivision thereof has not defaulted for a period longer than 30 days in the payment of interest or principal on any such general obligations during the period of 10 years next preceding such investment;
5. Tax anticipation warrants issued by the State of Illinois, or any county, city, town, village, sanitary district, park district, board of education, school district, or any political subdivision or municipal corporation of this state;
6. Bonds or other obligations which are payable from revenues or earnings specifically pledged therefor of a public utility in any state of the United States, municipality owned, either directly or indirectly through any civil division, authority or public instrumentality of the municipality, provided:
  - a. The municipality operating such utility has at least 2,500 inhabitants if such municipality is in the State of Illinois, or 30,000 inhabitants if outside the State of Illinois, as shown by the last Federal Census preceding such investment;
  - b. The utility has been in operation in its present form for a period of at least 7 years prior to the date of the investment;
  - c. Any bonds or obligations of such utility have not been in default within a period of 5 years in the payment of interest or principal on any of its indebtedness;
  - d. The rates for service shall be fixed according to engineering estimates so as to produce a sufficient revenue or earnings to pay all operating and maintenance charges and both principal and interest on such bonds or obligations;
  - e. The investment in any one issue of such securities shall not exceed 25% of such issue.
7. Bonds or other evidences of indebtedness issued or guaranteed by and railroad corporation organized under the laws of any state or states of the United States, or in equipment trust certificates, provided interest has been paid by the corporation on its indebtedness for at least 5 years last past. Not more than 1% of total investments shall consist of any one issue of these securities;
8. Bonds or other evidences of indebtedness of any public utility corporation, organized under the laws of any state of the United States, provided interest has been paid by the corporation on its indebtedness for at least the 5 years last past. Not more than 1% of total investments shall consist of any one issue of these securities;
9. Bonds or other evidences of indebtedness of any industrial or financial corporation, organized under the laws of any state of the United States, provided interest has been paid by the corporation on its indebtedness for at least the 5 years last past. Not more than 1% of total investments shall consist of any one issue of these securities;

10. Bonds which are payable from revenues or earnings specifically pledged therefor of the University of Illinois, the Southern Illinois University, the Board of Governors of State Colleges and Universities, or the Board of Regents of the Regency Universities System;

11. Bonds or other obligations guaranteed by the Government of the Dominion of Canada, or by any province of Canada, or by any Canadian city with a population of not less than 150,000 inhabitants, provided they are rated "A" or better by any 2 nationally known security concerns, and are payable in United States funds. Not more than 1% of total investments shall consist of any one issue of these securities;

12. Bonds or other obligations of the Commonwealth of Puerto Rico. Not more than 1% of total investments shall consist of any one issue of these securities;

12.1 Direct obligations of the State of Israel for the payment of money, or obligations for the payment of money which are guaranteed as to the payment of principal and interest by the State of Israel, on the following conditions:

a. The total investments in such obligations shall not exceed 5% of the book value of the aggregate investments owned by the fund;

b. The State of Israel shall not be in default in the payment of principal or interest on any of its direct general obligations on the date of such investment;

c. The bonds and interest thereon shall be payable in currency of the United States;

d. The bonds shall contain an option for the redemption thereof after 90 days from date of purchase;

e. The investment in these obligations has been approved in writing by investment counsel employed by the board, which counsel shall be a national or state bank or trust company authorized to do a trust business in the State of Illinois, or an investment advisor qualified under the Federal Investment Advisors Act of 1940 and registered under the Illinois Securities Act of 1953;

f. The fund making the investment shall have at least \$5,000,000 of net present assets.

13. Common stock, preferred stock, and convertible bonds and debentures of any railroad, public utility, financial or industrial corporation organized under the laws of the United States, any state or states of the United States or the District of Columbia, provided that;

a. The corporation shall have no arrears in dividends on its preferred stock, if any;

b. The corporation shall have paid a cash dividend on its common stock in each year of the 10-year period next preceding the date of investment and the aggregate net earnings available for dividends on the common stock of such corporation for the whole of such period shall have been at least equal to the amount of such dividends paid;

c. If the corporation shall have acquired its assets, or more than 25% thereof at book value, within a 5-year period immediately prior to the date of the investment therein by consolidation, merger, purchase of all or a substantial portion of the assets of any other corporation or corporations or purchase of the assets of any incorporated business enterprise by purchase or otherwise, the net income, fixed charges and preferred dividends of the acquired, predecessor or constituent corporations or enterprises shall be consolidated and adjusted in applying the test set forth in this paragraph 13;

d. The word "year" as used in this paragraph 13 shall mean the fiscal year of any corporation involved;

e. Such securities are listed on a national securities exchange as defined in the Federal Securities Exchange Act of 1934;

14. Common stock of a bank, organized under the laws of the United States or any state, which has capital funds, represented by capital, surplus and undivided profits of at least 20 million dollars;

15. Common stock of a life insurance company, organized under the laws of the United States or any state, which has capital funds, represented by capital, special surplus funds and unassigned surplus of at least 50 million dollars;

16. Common stock of a fire or casualty insurance company, or a combination thereof, organized under the laws of the United States or any state, which has capital funds represented by capital, net surplus and voluntary reserves, of at least 50 million dollars;

17. Savings accounts or certificates of deposit of a state or national bank to the extent that the deposits are insured by an instrumentality of the United States Government;

18. Withdrawable accounts or shares of a state or federal savings and loan association to the extent that such accounts or shares are insured by an instrumentality of the United States Government;

19. Shares of management investment companies, as defined in the Federal Investment Companies Act of 1940, which are registered under that Act and whose shares are registered under the Illinois Securities Act of 1953;

20. Participations in common trust funds formed under the Common Trust Fund Act, approved July 29, 1943, as amended.

(b) Investments in common stock participations in common trust funds and shares in management investment companies shall be:

1. limited, in book value, to 33½% of the total book value of all investments of the fund;

2. made only upon 2/3 vote of the board;

3. made only upon written recommendation of investment counsel, who shall be a national or state bank or trust company authorized to do trust business in the State of Illinois or an investment advisor qualified under the Federal Investment Advisors Act of 1940 and registered under the Illinois Securities Law of 1953.

(c) Investments in common and preferred stock shall be limited to (1) 1% of the common or preferred stock of one corporation and (2) 5% of the total book value investments of the fund in common and preferred stock of one corporation. IPC, Sec. 7-201.

The Illinois Pension Code also requires that all investments shall be clearly marked to indicate the fund's ownership and that the Board of Trustees may register securities in the name of the fund or the name of a nominee created of the Fund for that purpose by an appropriate financial institution. IPC, Sec. 7-201(e). Furthermore adequate accounts are required to show all such assets. IPC, Sec. 7-202.

#### *6. Municipal Employees' Officers', and Officials' Annuity and Benefit Fund (Cities over 500,000 Inhabitants)*

##### *a. Coverage*

The Municipal Employees', Officers', and Officials' Annuity and Benefit Fund (MEOOABF) extends its coverage to certain individuals employed by cities of over 500,000 inhabitants, as of the most recent United States Census. The term "municipal employee, employee, contributor or participant" extends to any of a number of positions. Included in the category of such employees are employees of the classified civil service on a noncontemporary basis, employees who were so employed prior to enactment of the Civil Service Act, individuals employed by the Board of Trustees of the MEOOABF, temporary employees under Section 10 of the Civil Service Act who has rendered not less than 12 months of service, at least 4 of which were consecutive full normal working months rendered immediately prior to applying for inclusion in the Fund, who files a written application for such inclusion, and who was employed after 1949, aldermen or other officials of the employer filing written application with the Board of Trustees, persons employed in the law department of the local court or Board of Election Commissioners, who was a contributor and participant as of December 31, 1959, in the fund of the Court and Law Department Employees' Annuity Act or the Board of Election Commissioners Employees' Annuity Act, employees of the public library who were included under the Public Library Employees' Pension Act as of December 31, 1965, and employees of the house of correction and participants as of December 31, 1968, in the House of Correction Employees' Pension Plan. IPC, Sec. 8-113.

*b. Funding*

Both the covered participants and the covered municipalities contribute to the funding of the MEOOABF. The covered participants contribute 6½% of their salaries after January 1, 1972, for their basic age and service annuities. IPC, Sec. 8-174. Widow's annuities are an additional contribution of 1% of salary. IPC, Sec. 8-182.

The municipality covered by the fund must contribute 6% of their employees' salaries, beginning July 1, 1953. IPC, Sec. 8-174. They must also contribute 2% for employees electing widow's benefits. IPC, Sec. 8-182. The municipality also contributes in lieu of the employee's contributions when the employee is receiving duty disability benefits. IPC, Sec. 8-187. The city also contributes its ordinary contributions when the employee is receiving ordinary disability benefits. IPC, Sec. 8-188. The city also contributes for administrative costs of the plan. IPC, Sec. 8-190.

The municipality's contributions are limited by either the amount obtained by a tax levy of .1093% on the value of all property taxable within the city or \$12,000,000. The city also need not exceed a percentage of employee's contributions if it has been covered for 3 years (the percentage, for example, for 1975 is 1.495, for the year 1976 is 1.560, for the year 1977 is 1.625, each times the contributions two years earlier). IPC, Sec. 8-173.

*c. Financing*

The municipality will finance its contributions by a special property tax on all property taxable within the jurisdiction of the city and collected in addition to and in a manner similar to the general property tax. IPC, Sec. 8-173.

*d. Fiduciary standards*

The Trustees of the Board of Trustees of the MEOOABF are restricted in their investment of Fund assets. They may invest only in:

(1) Interest bearing bonds, notes or bills of United States, or obligations fully guaranteed as to the payment of both principal and interest by the United States; or direct obligations guaranteed as to the payment of principal and interest by an agency or instrumentality of the United States;

(2) Interest bearing bonds of the State of Illinois, or of any county, city, village, incorporated town, municipal corporation, school district in the State or any other political subdivision authorized by law to levy taxes in Illinois or in revenue bonds of the State of Illinois;

(3) Revenue bonds issued by any county, city, village, incorporated town or political subdivision in this State, having a population of not less than 2,500 inhabitants according to the latest official census of the United States Census Bureau, but limited to the extent that no such investment shall exceed an amount of 25% of any one issue and limited to a total investment in this type of security of 15% of invested assets as such assets may be at the time any such investments are made;

(4) Tax anticipation warrants of the State of Illinois, or of any city in which this Article is in effect, or of the county in which the city is located, or of any school district within the city;

(5) Interest bearing general obligations, payable from unlimited ad valorem taxes, of any other State in the United States, or the political subdivisions of any such State having a population of over 30,000 as shown by the latest official census of the United States Census Bureau which has not defaulted in the payment of principal or interest on any of such general obligations for more than 30 days in the 10 years next preceding the date of such investment;

(6) Bonds or other obligations guaranteed by the Government of the Dominion of Canada, or by any Province of Canada, or by any Canadian city with a popu-

lation of not less than 150,000 inhabitants; provided that the principal and interest on such securities is payable in United States currency, and such investment is recommended in writing by investment counsel employed by the board as hereinafter specified in paragraph (9) (g) of this Section, relating to common stocks;

(6.1) Direct obligations of the State of Israel for the payment of money, or obligations for the payment of money which are guaranteed as to the payment of principal and interest by the State of Israel on the following conditions:

(a) The total investments in such obligations shall not exceed 5% of the book value of the aggregate investments owned by the fund;

(b) The State of Israel shall not be in default in the payment of principal or interest on any of its direct general obligations on the date of such investment;

(c) The bonds and interest thereon shall be payable in currency of the United States;

(d) The bonds shall contain an option for the redemption thereof after 90 days from date of purchase;

(e) The investment in these obligations has been approved in writing by investment counsel employed by the board, which counsel shall be a national or state bank or trust company authorized to do a trust business in the State of Illinois, or an investment advisor qualified under the Federal Investment Advisors Act of 1940 and registered under the Illinois Securities Act of 1953;

(f) The fund making the investment shall have at least \$5,000,000 of net present assets.

(7) Bonds or other evidences of indebtedness issued or guaranteed by any railroad corporation or in its equipment trust certificates; bonds or other evidences of indebtedness of any public utility corporation; bonds or other evidences of indebtedness of any industrial or finance corporation; provided (a) such bonds or such other evidences of indebtedness shall be issued or guaranteed by corporations which are incorporated in one of the States or the United States or operate under a national charter; (b) no default in the payment of interest or principal has occurred in respect to the corporate indebtedness within the past 5 years; and (c) not more than 1% of the then total invested assets of the fund shall be in any one issue of any one of such securities; not more than 10% of the total of any one separate issue of corporate bonds, trust certificates, or evidences of indebtedness, shall be purchased;

(8) Obligations of the International Bank for Reconstruction and Development, and obligations of the Inter-American Development Bank.

(9) Common or preferred stocks, which are legal investments for trust funds under laws of the State of Illinois, subject to the following conditions and limitations:

(a) The stocks are listed on a national securities exchange as defined in the Federal Securities Exchange Act;

(b) The stocks are issued or guaranteed by a corporation created or existing under the laws of the United States, or any State, district or territory thereof;

(c) The corporation which issued or guaranteed the stock has paid a cash dividend on its common stock in each of the 10 years next preceding the date on which the stock is to be purchased, and its net earnings available for dividends on common stock during this period was at least equal to the amount of the dividends paid on such stock;

(d) The corporation which issued or guaranteed the stock is not in arrears on payment of dividends on its preferred stock;

(e) The total book value of all stocks owned by the Retirement Board shall not exceed 25% of the total book value of all investments, determined as of the date of any proposed investment in common stock;

(f) The book value of stock investments in any one corporation shall not exceed 5% of the maximum amount which may be invested in common stocks, determined as of the date of the investment, and the investment in the stock of any one corporation shall not exceed 1% of the total outstanding stock of such corporation; IPC, Sec. 8-201.

No member of the Board of Trustees or other person officially connected with the Board may receive any commission on account of investments made by the Fund or trust. IPC, Sec. 8-246.

*7. County Employees' and Officers' Annuity and Benefit Fund (counties over 500,000 inhabitants)*

*a. Coverage*

The County Employees' and Officers' Annuity and Benefit Fund (CEOABF) covers the employees of counties with populations over 500,000 inhabitants. The term employee is defined, for the purposes of the CEOABF, to include: employees of the county in the classified civil service or under the County Police Merit Board as a deputy sheriff in the County Police Department, an employee of the county not in the classified civil service of the county but whose salary or wages is paid by the county, if employed for 12 months prior to electing to contribute, county officers elected by a vote of the people, persons employed by the Board of Trustees of the CEOABF, employees of the Public Aid in counties of 3,000,000 or more population, where transferred to the State employ by operation of law and where they do not elect coverage under a State pension plan, and employees of governmental units whose functions are transferred in whole or part to counties. IPC, Sec. 9-108.

*b. Funding*

Both the participating employees and the covered counties contribute to funding the CEOABF. The participating employees contribute 6½% of each salary payment after September 1, 1971, for age and service annuities. Deputy sheriffs participating as employees of the County Police Department contribute 7% of salary for age and service annuities. IPC, Sec. 9-170. Widow's benefits are an additional 1% of salary above \$3,000 per year. IPC, Sec. 9-177.

The counties which contribute to the CEOAFB must contribute 7% of each employee's salary to the fund. IPC, Sec. 9-170. In addition, where the employee elects widow's coverage, an additional 1¾% must be contributed. IPC, Sec. 9-177. The county also contributes for the costs of administration. IPC, Sec. 9-183. Where the employee is under duty disability benefits, the county shall contribute both its normal contribution and his (or hers) to the fund. IPC, Sec. 9-180. Where the employee is on ordinary disability benefits, the county's contributions are its normal level. IPC, Sec. 9-181. The county need not contribute more than 80% of the employees' contributions for the year two years prior. IPC, Sec. 9-169.

*c. Financing*

The county contributions are financed by a general property tax levy which will produce the required contributions. The levy is to be additional to, but collected in the same manner as the general county property taxes. IPC, Sec. 9-169.

*d. Fiduciary standards*

The Board of Trustees of the fund has the power of investment of the trust's assets but, it is limited as to the nature of the permissible investments. The Board may only invest trust assets in:

- (1) Interest bearing bonds of the United States;
- (2) Interest bearing bonds of the State of Illinois, or of any county, city, village, incorporated town, municipal corporation or school district of the state;

(3) Federal farm loan bonds issued in accordance with the Federal Farm Loan Act:

(4) Bonds or other evidences of indebtedness issued or guaranteed by any railroad corporation, or in equipment trust certificates, provided the corporation has not defaulted on any of its obligations, either as to principal or interest, within a period of 5 years prior to the date of investment. No more than 1% of total investments shall consist of any one issue of such securities;

(5) Bonds or other evidences of indebtedness of any public utility corporation, provided the corporation has not defaulted on any of its obligations, either as to principal or interest, within a period of 5 years prior to the date of investment. No more than 1% of total investments shall consist of any one issue of such securities;

(6) Bonds or other evidences of indebtedness of any industrial or finance corporation, provided the corporation has not defaulted on any of its obligations, either as to principal or interest, within a period of 5 years prior to the date of investment. No more than 1% of total investments shall consist of any one issue of such securities;

(7) Bonds of the International Bank of Reconstruction and Development which are direct and unsecured obligations of the Bank, provided that the investment in any one issue of these bonds shall not exceed 1% thereof, and that the total investments in such bonds shall be limited to 5% of the total amount of investments owned by the fund:

(8) Obligations of the 12 Federal Land Banks and the Inter-American Development Bank.

(8.1) Direct obligations of the State of Israel for the payment of money, or obligations for the payment of money which are guaranteed as to the payment of principal and interest by the State of Israel, on the following conditions:

(a) The total investments in such obligations shall not exceed 5% of the book value of the aggregate investments owned by the fund;

(b) The State of Israel shall not be in default in the payment of principal or interest on any of its direct general obligations on the date of such investment;

(c) The bonds and interest thereon shall be payable in currency of the United States;

(d) The bonds shall contain an option for the redemption thereof after 90 days from date of purchase;

(e) The investment in these obligations has been approved in writing by investment counsel employed by the board, which counsel shall be a national or state bank or trust company authorized to do a trust business in the State of Illinois, or and investment advisor qualified under the Federal Investment Advisory Act of 1940 and registered under the Illinois Securities Act of 1953;

(f) The fund making the investments shall have at least \$5,000,000 of net present assets.

(9) Common stocks, which are legal investments for trust funds under laws of the State of Illinois subject to the following conditions and limitations:

(a) The stocks are listed on a national securities exchange as defined in the Federal Securities Exchange Act;

(b) The stocks are issued or guaranteed by a corporation created or existing under the laws of the United States, or any State, district or territory thereof;

(c) The corporation which issued or guaranteed the stock has paid a cash dividend on its common stock in each of the 10 years next preceding the date on which the stock is to be purchased, and its net earnings available for dividends on common stock during this period was at least equal to the amount of the dividends paid on such stock;

(d) The corporation which issued or guaranteed the stock is not in arrears on payment of dividends on its preferred stock;

(e) The total book value of all stocks owned by the Retirement Board shall not exceed 15% of the total book value of all investment in common stock;

(f) The book value of stock investments in any one corporation shall not exceed 5% of the maximum amount which may be invested in common stocks, determined as of the date of the investment, and the investment in the stock of any one corporation shall not exceed 1% of the total outstanding stock of such corporation: IPC, Sec. 9-194.

## *8. Forest Preserve District Employees' Annuity and Benefit Fund*

### *a. Coverage*

When a forest preserve district has boundaries co-extensive with those of a county which is permitted to be covered by the County Em-

ployees' and Officers' Annuity and Benefit Fund, the separate fund of the Forest Preserve District Employees' Annuity and Benefit Fund shall be established, IPC, Sec. 10-101.

*b. Funding*

The same funding requirements as apply to the CEOABF apply to the FPDEABF, except the limit on the District's required contributions. The District may not be required to levy a tax of more than 1.3 times the employee contributions for the year two years prior. IPC, Sec. 10-107.

*c. Financing*

The District may levy an annual tax to finance its contributions. The tax would be general and additional to the other property taxes, and collected and levied in the same fashion as the other taxes, IPC, Sec. 10-107.

*d. Fiduciary standards*

No provisions for fiduciary standards are made in the Illinois Pension Code for the Forest Preserve District Employees' Annuity and Benefit Fund.

*9. Laborers' and Retirement Board Employees' Annuity and Benefit Fund (Cities over 500,000 Inhabitants)*

*a. Coverage*

For cities of over 500,000 inhabitants, the Laborers' and Retirement Board Employees' Annuity and Benefit Fund (LRBEAB) permits participation and coverage of any employee in a position classified by the Civil Service Act as labor service, and appointed in a nontemporary capacity, any employee in a labor service position for an appropriate city prior to enactment of the Civil Service Act, any person employed by the Board of Trustees of the LRBEAB, any person employed by a retirement board of any other annuity and benefit fund in such city, other than a fund under the LRBEAB, persons employed as labor service under Section 10 of the Civil Service Act (After July 31, 1961), and employees of a junior college board. IPC, Sec. 11-110.

*b. Funding*

The covered city and participating employees both contribute towards funding of the Laborers' and Retirement Board Employees' Annuity and Benefit Fund. The participating employees are required to contribute  $6\frac{1}{2}\%$  of their salaries (after January 1, 1972) for age and service annuity payments. IPC, Sec. 11-170. Furthermore, any employee in service on July 1, 1947 may elect to make additional contributions up to  $7/13$  of the accumulated age and service annuity sums up to that date. IPC, Sec. 11-171. Employees may contribute an additional  $1\frac{1}{2}\%$  for widow's annuities (after January 1, 1966). IPC, Sec. 11-174.

The city covered by the Fund must contribute 6% of each employees' payment of salary (after July 1, 1953). IPC, Sec. 11-170. An employee's contribution of the elective contribution under IPC, Sec. 11-171 requires the city to also contribute  $1\frac{4}{10}$  times the additional employee contribution to the Fund. IPC, Sec. 11-171. The city must also contribute 2% of the salaries of employees who elect widow's benefits.

IPC, Sec. 11-174. It must also contribute the amount usually contributed by the employee and itself where the employee is receiving duty disability benefits. IPC, Sec. 11-176. Where the employee receives ordinary disability benefits, the city must contribute its own ordinary contributions. IPC, Sec. 11-177. The city also contributes for administration costs. IPC, Sec. 11-179. If necessary, the city must make additional contributions to credit to its contribution reserve such amounts as needed to meet age and service, prior service, and widow's annuities, to meet any part of the minimum annuity as is in excess of the age and service and prior service annuities and widow's annuities, to provide a sufficient balance in the investment and interest reserves of the fund to permit transfer of funds from that fund to other funds. IPC, Sec. 11-178. However, the city need not contribute over an amount raised by a general property tax levy to produce an equivalent to the employees' contributions in the year two years prior times a given factor (for 1975, the factor is 1.235; for 1976, the factor is 1.280; for 1977, the factor is 1.325; for 1978, the factor is 1.370). IPC, Sec. 11-169.

*c. Financing*

The cities' contributions are financed by a compulsory general property tax levied and collected in addition to but in a manner similar to other general property taxes. IPC, Sec. 11-169.

*d. Fiduciary standards*

The Trustees of the Board of Trustees of the Laborers' and Retirement Board Employees' Annuity and Benefit Fund are authorized to invest the reserves (receipts) of the Fund, to the extent not required for payment of benefits. They may, however, make only certain delineated investments, to wit:

(1) Interest bearing bonds, notes or bills of the United States, or obligations fully guaranteed as to the payment of both principal and interest by the United States;

(2) Interest bearing bonds of the State of Illinois, or of any county, city, village, incorporated town, municipal corporation, school district in the State or any other political subdivision authorized by law to levy taxes in Illinois or in revenue bonds of the State of Illinois;

(3) Revenue bonds issued by any county, city, village, incorporated town or political subdivision in this State, having a population of not less than 2,500 inhabitants according to the latest official census of the United States Census Bureau, but limited to the extent that no such investment shall exceed an amount of 25% of any one issue and limited to a total investment in this type of security of 15% of invested assets as such assets may be at the time any such investments are made;

(4) Tax anticipation warrants of the State of Illinois, or of any city in which this Article is in effect, or the county in which the city is located, or of any school district within the city;

(5) Interest bearing general obligations, payable from unlimited ad valorem taxes, of any other State in the United States, or the political subdivisions of any such State having a population of over 30,000 as shown by the latest official census of the United States Census Bureau which has not defaulted in the payment of principal or interest on any of such general obligations for more than 30 days in the 10 years next preceding the date of such investment;

(6) Bonds or other evidences of indebtedness issued or guaranteed by any railroad corporation or in its equipment trust certificates; bonds or other evidences of indebtedness of any public utility corporation; bonds or other evidences of indebtedness of any industrial or finance corporation; provided (a) such bonds or such other evidences of indebtedness shall be issued or guaranteed by corporations which are incorporated in one of the States of the United States; (b) no default in the payment of interest or principal has occurred in respect to the

corporate indebtedness within the past 5 years; and (c) not more than 1% of the then total invested assets of the fund shall be in any one issue of any one of such securities; not more than 10% of the total, of any one separate issue of corporate bonds, trust certificates, or evidences of indebtedness, shall be purchased;

(7) Obligations of the International Bank for Reconstruction and Development, and obligations of the Inter-American Development Bank;

(7.1) Direct obligations of the State of Israel for the payment of money, or obligations for the payment of money which are guaranteed as to the payment of principal and interest by the State of Israel, on the following conditions:

(a) The total investments in such obligations shall not exceed 5% of the book value of the aggregate investments owned by the fund;

(b) The State of Israel shall not be in default in the payment of principal or interest on any of its direct general obligations on the date of such investment;

(c) The bonds and interest thereon shall be payable in currency of the United States;

(d) The bonds shall contain an option for the redemption thereof after 90 days from date of purchase;

(e) The investment in these obligations has been approved in writing by investment counsel employed by the board, which counsel shall be a national or state bank or trust company authorized to do a trust business in the State of Illinois, or an investment advisor qualified under the Federal Investment Advisors Act of 1940 and registered under the Illinois Securities Act of 1953;

(f) The fund making the investment shall have at least \$5,000,000 of net present assets.

(8) Common stocks, which are legal investments for trust funds under laws of the State of Illinois, subject to the following conditions and limitations;

(a) The stocks are listed on a national securities exchange as defined in the Federal Securities Exchange Act;

(b) The stocks are issued or guaranteed by a corporation created or existing under the laws of the United States, or any State, district or territory thereof;

(c) The corporation which issued or guaranteed the stock has paid a cash dividend on its common stock in each of the 10 years next preceding the date on which the stock is to be purchased, and its net earnings available for dividends on common stock during this period was at least equal to the amount of the dividends paid on such stock;

(d) The corporation which issued or guaranteed the stock is not in arrears on payment of dividends on its preferred stock;

(e) The total book value of all stocks owned by the Retirement Board shall not exceed 10% of the total book value of all investments, determined as of the date of any proposed investment in common stock;

(f) The book value of stock investments in any one corporation shall not exceed 5% of the maximum amount which may be invested in common stocks, determined as of the date of the investment, and the investment in the stock of any one corporation shall not exceed 1% of the total outstanding stock of such corporation; IPC, Sec. 11-190.

No member of the Board of Trustees or individual officially connected with the Board may receive any remuneration or commission in connection with any investment by the Board. IPC, Sec. 11-225.

#### *10. Park Employees' and Retirement Board Employees' Annuity and Benefit Fund (cities over 500,000)*

##### *a. Coverage*

In cities of over 500,000 population and having a Board of Park Commissioners, the employees of the Board of Park Commissioners and the employees of the Retirement Board or Board of Trustees of the Park Employees' and Retirement Board Employees' Annuity and Benefit Fund (PERBEABF) are covered under this Article of the Illinois Pension Code. IPC, Sec. 12-101.

##### *b. Funding*

Both the applicable city and the participating employees contribute towards funding the PERBEABF. The contributing employees pay

into the Fund 6½% of their salaries (after September 1, 1971) for the age and retirement service annuity, IPC, Sec. 12-150. Additional contributions are permitted of employees employed as of June 30, 1947, to bring the contributions in his or her account to the level as if contribution at a rate of 4% of salary had been made, IPC, Sec. 12-150(d). Furthermore, an additional contribution for widow's benefits is in the amount of a 1% salary, IPC, Sec. 12-151. In addition, to defray the cost of death benefit provided, an additional employee contribution may be made, not exceeding \$600 per month or the amount sufficient to provide the added benefits, IPC, Sec. 12-153.

The cities covered by the plan must contribute 1.50 times the contributions for age and service annuities of their employees, and 2.75 times the employees' contributions for widow's benefits (after August 4, 1961), IPC, Sec. 12-152. The city will also contribute the employees' and employer's share of funding where the employee is on ordinary or duty disability benefits, IPC, Sec. 12-155. The city need not contribute more than would be obtained by a tax levy at a rate of .0275% on all taxable property within its jurisdiction, IPC, Sec. 12-149.

*c. Financing*

The Board of Park Commissioners shall levy an annual property tax on all taxable property within the jurisdiction. The tax is to be levied and collected additionally to and in the same manner as other general property taxes, IPC, Sec. 12-149.

*d. Fiduciary standards*

The retirement board (Board of Trustees of the fund) may either invest the assets itself or invest in the commingled funds of the Illinois State Board of Investment, IPC, Sec. 12-166.1. If it invests the assets itself, it may only invest in:

(1) bonds, notes and other direct obligations of the United States Government; bonds, notes and other obligations of any United States Government agency or instrumentality, whether or not guaranteed; and obligations the principal and interest of which are guaranteed unconditionally by the United States Government or by an agency or instrumentality thereof;

(2) bonds and notes of the State of Illinois;

(3) bonds or evidences of indebtedness which are general obligations of any county, city, town, village, school district, sanitary district, park district, Board of Education, or of any political subdivision of municipal corporation of the State of Illinois;

(4) bonds or notes which are general obligations of any state in the United States, or of any political subdivision thereof, provided such political subdivision had a population as shown by the last Federal Census preceding such investment of not less than 30,000 inhabitants, and such state or political subdivision has not defaulted for a period longer than 30 days in the payment of interest or principal on any of such general obligations during the period of 10 years next preceding such investment;

(5) valid tax anticipation warrants of the State of Illinois, or of any county, city, town, village, sanitary district, park district, Board of Education, school district, or any political subdivision or municipal corporation of this State;

(6) bonds or other obligations which are payable from revenues or earnings specifically pledged therefor of a public utility in Illinois, municipally owned, either directly or indirectly through any civil division, authority or public instrumentality of the municipality, provided: (a) the municipality operating the utility has at least 2,500 inhabitants as shown by the last Federal Census preceding such investment; (b) the utility has been in operation in its present form at least 7 years prior to the date of the investment; (c) any bonds or obligations of the utility have not been in default within a period of 5 years in the payment of interest or principal on any of its indebtedness; (d) the rates for

service are fixed according to engineering estimates so as to produce sufficient revenue or earnings to pay all operating and maintenance charges and both principal and interest on such bonds or obligations; (e) the investment in any one issue of such bonds does not exceed 25% of such issue; (f) the amortized book value of the investment in this type of security does not exceed 10% of the amortized book value of the total investments owned by the fund;

(7) bonds or other evidences of indebtedness issued or guaranteed by any railroad corporation of any state of the United States of America, or in equipment trust certificates thereof, provided interest has been paid by the corporation on its indebtedness for at least the 5 years last past. Not more than 1% of the total investments shall consist of any one issue of these bonds;

(8) bonds or other evidences of indebtedness of any public utility corporation of any state of the United States of America, provided interest has been paid by the corporation on its indebtedness for at least the 5 years last past. Not more than 1% of total investments shall consist of any one issue of these bonds;

(9) bonds or other evidences of indebtedness of any industrial corporation of any state of the United States of America, provided interest has been paid by the corporation on its indebtedness for at least the 5 years last past. Not more than 1% of total investments shall consist of any one issue of these bonds;

(10) bonds which are payable from revenues or earnings specifically pledged therefor of the University of Illinois, the Southern Illinois University of the Teachers College Board.

(11) bonds of the International Bank for Reconstruction and Development which are direct and unsecured obligations of the Bank provided that the investment in any one issue of these bonds shall not exceed 1% thereof, and that the total investments in such bonds shall be limited to 5% of the total amount of investments owned by the fund.

(12) bonds of the Inter-American Development Bank which are direct and unsecured obligations of the Bank provided that the investment in any one issue of these bonds shall not exceed 1% thereof, and that the total investments in such bonds shall be limited to 5% of the total amount of investments owned by the fund.

(13) direct obligations of the State of Israel for the payment of money, or obligations for the payment of money which are guaranteed as to the payment of principal and interest by the State of Israel, on the following conditions:

(a) The total investments in such obligations shall not exceed 5% of the book value of the aggregate investment owned by the fund;

(b) The State of Israel shall not be in default in the payment of principal or interest on any of its direct general obligations on the date of such investment;

(c) The bonds and interest thereon shall be payable in currency of the United States;

(d) The bonds shall contain an option for the redemption thereof after 90 days from date of purchase; IPC, Sec. 12-166.

Furthermore, no member of the Board of Trustees nor any individual connected directly with the Board may have any interest "direct or indirect, in the gains or profits of any investment made by such board \* \* \*" IPC, Sec. 12-186. Nor may any such person have any direct or indirect interest or receive any pay or emolument for such investments. Board members and related individuals may not act as agents or partners for others to borrow or use funds of the Trust, nor may any such person "become an endorser or surety or become in any manner an obligor for monies loaned by or borrowed of any such board." IPC, Sec. 12-186.

## *11. Sanitary District Employees' and Trustees' Annuity and Benefit Fund*

### *a. Coverage*

The Sanitary District Employees' and Trustees' Annuity and Benefit Fund extends its coverage to all sanitary districts located to include within them at least two towns or villages or cities with a total population of at least 1,000,000 inhabitants. IPC, Sec. 13-101. An indi-

vidual may participate as an employee of such sanitary district if he or she is an employee of the district appointed by civil service certification and appointment under the "Chicago Sanitary District Act," or an employee exempt from the classified civil service, a temporary employee of the sanitary district, an appointed officer or acting officer of the sanitary district, an employee of the Board of Trustees, or a Trustee of the sanitary district who elected to become a participating employee. IPC, Sec. 13-108.

*b. Funding*

The participating employees and covered district both contribute towards the funding of the plan. The contributions required of the participating employees for age and service annuities are at a rate of 6½% of salary (after January 1, 1973). IPC, Sec. 13-170. Any employee who has service prior to August 1, 1947, may make an additional elective contribution. IPC, Sec. 13-172. To aid in defraying the cost of the increased service retirement allowance, each employee must contribute an additional ½% of salary after January, 1960. IPC, Sec. 13-172. Widow's annuities are an additional 1½% of salary. IPC, Sec. 13-173.

The district contributes at a rate of 6% of each employee's salary (after August 1, 1953). IPC, Sec. 13-170(b). The district also contributes 2% of salaries of employees for widow's benefits. IPC, Sec. 13-173. The district is also required to contribute 5¾% salary of employees for prior service annuity on the effective date of the employee's service, subject to the salary limitation of \$3,000 per year, plus interest. IPC, Sec. 13-177. The district also contributes for administration costs. IPC, Sec. 13-179. The district's contributions need not exceed the amount contributed by employees two years prior thereto, times a factor statutorily determined (for 1975 the factor is 1.80; for 1976 the factor is 1.85; for 1977 the factor is 1.90; for all years thereafter the factor is 1.95). IPC, Sec. 13-169.

*c. Financing*

The district's contributions are financed through a property tax on all property within the district, levied and collected separately, but in the same manner as other general property taxes. IPC, Sec. 13-169.

*d. Fiduciary standards*

While the Board of Trustees of the plan may invest the assets and receipts of the trust, it may only invest in delineated assets, to wit:

(1) Interest bearing bonds, notes or bills of the United States, or obligations fully guaranteed as to the payment of both principal and interest by the United States;

(2) Interest bearing bonds of the State of Illinois, or of any county, city, village, incorporated town, municipal corporation, school district in the State or any other political subdivision authorized by law to levy taxes in Illinois or in revenue bonds of the State of Illinois.

(3) Revenue bonds issued by any county, city, village, incorporated town or political subdivision in this State, having a population of not less than 2,500 inhabitants according to the latest official census of the United States Census Bureau, but limited to the extent that no such investment shall exceed an amount of 25% of any one issue and limited to a total investment in this type of security of 15% of invested assets as such assets may be at the time any such investments are made;

(4) Tax anticipation warrants of the State of Illinois, or of any city in which this Article is in effect, or of the county in which the city is located, or of any school district within the city;

(5) Interest bearing general obligations, payable from unlimited ad valorem taxes, of any other State in the United States, or the political subdivisions of any such State having a population of over 30,000 as shown by the latest official census of the United States Census Bureau which has not defaulted in the payment of principal or interest on any of such general obligations for more than 30 days in the 10 years next preceding the date of such investment;

(6) Bonds or other evidences of indebtedness issued or guaranteed by any railroad corporation or in its equipment trust certificates; bonds or other evidence of indebtedness of any public utility corporation; bonds or other evidences of indebtedness of any industrial or finance corporation; provided (a) such bonds or such other evidences of indebtedness shall be issued or guaranteed by corporations which are incorporated in one of the States of the United States; (b) no default in the payment of interest or principal has occurred in respect to the corporate indebtedness within the past 5 years; and (c) not more than 1% of the then total invested assets of the fund shall be in any one issue of any one of such securities; not more than 10% of the total, of any one separate issue of corporate bonds, trust certificates, or evidences of indebtedness, shall be purchased; and not more than 50% of total investments shall be in the combined category in this paragraph described.

(6.1) Direct obligations of the State of Israel for the payment of money, or obligations for the payment of money which are guaranteed as to the payment of principal and interest by the State of Israel, on the following conditions:

(a) The total investments in such obligations shall not exceed 5% of the book value of the aggregate investments owned by the fund;

(b) The State of Israel shall not be in default in the payment of principal or interest on any of its direct general obligations on the date of such investment;

(c) The bonds and interest thereon shall be payable in currency of the United States;

(d) The bonds shall contain an option for the redemption thereof after 90 days from date of purchase;

(e) The investment in these obligations has been approved in writing by investment counsel employed by the board, which counsel shall be a national or state bank or trust company authorized to do a trust business in the State of Illinois, or an investment advisor qualified under the Federal Investment Advisors Act of 1940 and registered under the Illinois Securities Act of 1953.

(f) The fund making the investment shall have at least \$5,000,000 of net present assets.

(7) Common and preferred stocks which are legal investments for trust funds under the laws of the State of Illinois, provided (1) the stocks are listed on a national securities exchange as defined in the Federal Securities Exchange Act, (2) the investment is approved by at least  $\frac{2}{3}$  of the membership of the members of the board after having been recommended in writing by a national or state bank or trust company authorized to do business in the State of Illinois, or by an investment counsel licensed as such under the laws of the United States, and employed by the board as investment counsel, (3) the stocks are issued by a corporation created or existing under the laws of the United States, or of any state, district or territory thereof, (4) the corporation shall have no arrears of dividends on its preferred stock, (5) the corporation has paid a cash dividend on its common stock in each of the 10 year period next preceding date of investment and the aggregate net earnings available for dividends on the common stock of such corporation during such period was at least equal to the amount of such dividend paid, (6) the preferred stock had average annual net income plus average annual fixed charges at least equal to 2 times the sum of its average annual fixed charges and which for the last 2 fiscal years of such period, had annual net income plus annual fixed charges of at least  $1\frac{1}{2}$  times the sum of its dividend requirements for preferred stock and its fixed charges, for a period of 5 fiscal years next preceding the date of investment for which the necessary statistical data are available in published fiscal year statements, (7) the total book value of all stocks owned by the fund shall not exceed 33 $\frac{1}{3}$ % of the total book value of all investments of the fund and (8) the book value of stock investments in any one corporation shall not exceed 5% of the maximum amount which may be invested in stocks, determined as of date of investment, and the investment in the stock of any one corporation shall not exceed 1% of the total outstanding stock of such corporation.

(8) Bonds of the International Bank for Reconstruction and Development which are direct and unsecured obligations of the Bank, provided that the investment in any one issue of these bonds shall not exceed 1% thereof, and that

the total investments in such bonds shall be limited to 5% of the total amount of investments owned by the fund:

(9) Obligations of the 12 Federal Land Banks and the Inter-American Development Bank.

For the purpose of this Section, fixed charges shall mean interest on funded or unfunded debt and contingent interest charges.

Limitations hereinbefore set forth shall be applicable only at date investment was purchased. No sale or liquidation of any investment shall be required solely because of changes in the relative market value of investments at any time. IPC, Sec. 13-189.

The Board may also invest the funds of the Trust in the comingled investment fund of the Illinois Board of Investment. IPC, Sec. 189.1. Furthermore, no Board member may receive any commission or payment from the fund as pay or salary, nor may they (or any person related to the Board) receive any commission with respect to investments of the Board. IPC, Sec. 13-214; 13-215.

*12. Public School Teachers' Pension and Retirement Fund (cities of over 500,000 inhabitants)*

*a. Coverage*

In each city with a population over 500,000 there will be a Public School Teachers' Pension and Retirement Fund (PSTPRF). It covers all "members of the teaching force of the city, including principals, assistant principals, the general superintendent of schools, the deputy superintendent of schools, associate superintendents of schools, members of the Board of Examiners, all other persons whose employment requires a teaching certificate issued by the Board of Examiners and employees of the Board of Trustees but excluding persons contributing concurrently to any other public employee pension system in Illinois. . . ." IPC, Sec. 17-106. The coverage also excludes individuals retired and receiving benefits under another pension system of the State, persons employed on an hourly basis, and persons receiving pensions from the fund who are employed temporarily by the Board of Education (for less than 75 days in a school year). IPC, Sec. 17-106.

*b. Funding*

Both the cities and the covered employees contribute toward the funding of the Public School Teachers' Pension and Retirement Fund. The participating employees contribute  $6\frac{1}{2}\%$  of their salaries for service or disability retirement pension, and additional contributions of  $\frac{1}{2}\%$  for annual increase in base pension and  $1\frac{1}{2}\%$  for survivors' and children's pensions. IPC, Sec. 17-130.

The municipal government contributes an amount raised by a special tax for this purpose. The tax will be at a rate of .202 on the dollar value of property located within the city. IPC, Sec. 17-128.

*c. Financing*

The city's contributions are financed through a mandatory property tax levied on all property in the city, additional to and levied in the same manner as other general property taxes. IPC, Sec. 17-128.

*d. Fiduciary standards*

The Board of Trustees of the Public School Teachers' Pension and Retirement Fund is vested with the authority to invest the funds of the Fund, but only in certain delineated investments, to wit:

1. Bonds, notes and other direct obligations of the United States Government, and also obligations of instrumentalities and agencies of the United States Government, whether or not guaranteed by that Government;

2. General obligation bonds and notes of the State of Illinois;

3. Bonds or other evidences of indebtedness which are general obligations of any political subdivision or municipal corporation of the State of Illinois;

4. General obligation bonds of any other state of the United States or of any political subdivision thereof or municipal corporation, if the political subdivision or municipal corporation had a population as shown by the last federal census preceding the investment of not less than 30,000 inhabitants, and the state, political subdivision or municipal corporation has not defaulted for a period longer than 90 days in the payment of interest or principal on any of its general obligations during the period of 10 years next preceding the investment;

5. Tax anticipation warrants issued by the State of Illinois, or by any political subdivision or municipal corporation of the State;

6. Bonds or other obligations which are payable from revenues or earnings, specifically pledged therefor, of a public utility in the State of Illinois, municipally owned, either directly or indirectly through any civil division, authority or public instrumentality of the municipality, if (a) the municipality operating such utility has at least 2,500 inhabitants as shown by the last federal census preceding such investment; (b) the utility has been in operation for a period of at least 7 years prior to the date of the investment; (c) bonds or obligations of the utility have not been in default for a period longer than 90 days in the payment of interest or principal; and (d) the rates for service are fixed so as to produce sufficient revenue or earnings to pay all operating and maintenance charges and both principal and interest on the bonds or obligations.

The investment in any one issue of these bonds may not exceed 25% of that issue, and the total investment may not exceed 10% of the total amount of investments owned by the fund;

7. Revenue bonds issued by the Board of Trustees of the University of Illinois, the Board of Trustees of Southern Illinois University, the Board of Regents of the Regency Universities System, and the Board of Governors of State Colleges and Universities, and any public building commission organized under the laws of this State;

8. Bonds or other obligations which are payable from revenues or earnings, specifically pledged therefor, of a public utility outside the State of Illinois, municipally owned, either directly or indirectly through any civil division, authority or public instrumentality of the municipality, if (a) the municipality operating the utility has at least 30,000 inhabitants as shown by the last federal census preceding the investment; (b) the utility has been in operation for a period of at least 7 years prior to the date of the investment; (c) bonds or obligations of the utility have not been in default for a period longer than 90 days in the payment of interest or principal; and (d) the rates for service are fixed so as to produce sufficient revenue or earnings to pay all operating and maintenance charges and both principal and interest on the bonds or obligations;

The investment in any one issue of these bonds may not exceed 25% of such issue, and the total investment may not exceed 10% of the total amount of investments owned by the fund.

9. Obligations of Canada, or any province thereof, or of any city having a population of at least 150,000 inhabitants, if the principal and interest are payable in United States currency. The total investments in these securities may not exceed 5% of the total amount of investments owned by the fund;

10. Bonds of the Commonwealth of Puerto Rico. The investment in any one issue of bonds of that government may not exceed 10% thereof and the total investments in securities thereof may not exceed 2% of the total amount of investments owned by the fund;

10.1. Direct obligations of the State of Israel for the payment of money, or obligations for the payment of money which are guaranteed as to the payment of principal and interest by the State of Israel, on the following conditions:

(a) The total investments in such obligations shall not exceed 5% of the book value of the aggregate investments owned by the fund;

(b) The State of Israel shall not be in default in the payment of principal or interest on any of its direct general obligations on the date of such investment;

(c) The bonds and interest thereon shall be payable in currency of the United States;

(d) The bonds shall contain an option for the redemption thereof after 90 days from date of purchase;

(e) The investment in these obligations has been approved in writing by investment counsel employed by the board, which counsel shall be a national or state bank or trust company authorized to do a trust business in the State of Illinois, or an investment advisor qualified under the Federal Investment Advisors Act of 1940 and registered under the Illinois Securities Act of 1953.

(f) The fund making the investment shall have at least \$5,000,000 of net present assets.

11. Bonds or other evidences of indebtedness issued or guaranteed by any railroad corporation, or in equipment trust certificates, if the corporation has not defaulted on any of its obligations, either as to principal or interest, within a period of 5 years prior to the date of investment. No more than 1% of total investments may consist of any one issue of these securities;

12. Bonds or other evidences of indebtedness of any public utility corporation, if the corporation has not defaulted on any of its obligations, either as to principal or interest, within a period of 5 years prior to the date of investment. No more than 1% of total investments may consist of any one issue of these securities;

13. Bonds or other evidences of indebtedness of any industrial or finance corporation, if the corporation has not defaulted on any of its obligations, either as to principal or interest, within a period of 5 years prior to the date of investment. No more than 1% of total investments may consist of any one issue of these securities;

14. Bank capital notes which are direct, unsecured obligations of a banking institution which is a member of a Federal Deposit Insurance Corporation having capital funds represented by capital stock, surplus and undivided profits of at least \$20,000,000, if the institution has not defaulted on any of its obligations, either as to principal or interest, within a period of 5 years prior to the date of investment. No more than 1% of total investments may consist of any one issue of these obligations.

15. The securities mentioned above in paragraphs 11, 12, 13 and 14 must be securities of corporations which are incorporated in one of the states of the United States of America.

16(1). Common and preferred stocks of any corporation chartered under the laws of the United States or of any state, district or territory thereof, if listed on a national securities exchange as defined in the Federal Securities Exchange Act and are legal for trust funds in Illinois. Common stocks are eligible if (a) the corporation has paid cash dividends on its common stocks in each of the last 5 years next preceding the date of investment and (b) the corporation's aggregate net earnings available for dividends for the whole of that period have been at least equal to the amount of the dividends paid. The investment in the stock of any single corporation (including shares previously purchased) may not exceed 1% of the book value of the total investments of the fund on the date of purchase or be greater than 1% of the total outstanding stock of the corporation. Preferred stocks are eligible if the company's common stock meets the above criteria.

16(2). Common stocks of the following types of institutions whose securities are unlisted: any bank which is a member of the Federal Deposit Insurance Corporation having capital funds represented by capital stock, surplus and undivided profits of at least \$20,000,000; any life insurance company having capital funds represented by capital stock, special surplus funds and unassigned surplus totalling at least \$50,000,000; and any fire or casualty insurance company, or combination thereof, having capital funds represented by capital stock, net surplus and voluntary reserves of at least \$50,000,000. Common stocks are eligible if (a) the institution has paid cash dividends on its common stock in each of the last 10 years next preceding the date of investment and (b) the institution's aggregate net earnings available for dividends for the whole of that period have been at least equal to the amount of the dividends paid. The investment in the stock of any single institution (including shares previously purchased) may not exceed 1% of the book value of the total investments of the fund on the date of purchase nor be greater than 1% of the total outstanding stock of the institution.

16(3). The aggregate amount to be invested in common and preferred stocks shall be limited to 33½% of the book value of the total investments of the fund on the date the investment is made and the investment in any such stocks must be approved by at least 2/3 of the membership of the board.

17. Notes secured by mortgages under Sections 203 and 207 of the National Housing Act which are insured by the federal housing commissioner, or his successor or assigns, or in debentures issued by such commissioner, which are guaranteed as to principal and interest by the Federal Housing Administration, or agency of the United States Government. No more than 20% of total investments of the fund may consist of these securities.

18. Bonds of the International Bank for Reconstruction and Development and the Inter-American Development Bank which are direct and unsecured obligations of these Banks. The investment in any one issue of these bonds may not exceed 1% thereof, and the total investments in these bonds must be limited to 5% of the total amount of investments owned by the fund.

19. Loans to veterans guaranteed in whole or part by the United States Government pursuant to Title III of the Act of Congress known as the "Servicemen's Readjustment Act of 1944", as amended or supplemented from time to time, provided such guaranteed loans are liens upon real estate. IPC, Sec. 17-146.

The Trustees may also invest funds in the comingled investment funds of the Illinois State Board of Investment. IPC, Sec. 17-146.1.

*13. The Closed Funds (for the house of correction employees and for the public library employees)*

*a. Coverage*

At the election of the Board of Inspectors of the Houses of Correction for a city with a population over 150,000, such Board may adopt a House of Correction Employees' Pension Fund, with coverage of all employees of the applicable houses of correction. IPC, Sec. 19-101. For these purposes, employees of the houses of correction are those so employed under the appropriate civil service law, and those in the employ prior to enactment of the civil service law. IPC, Sec. 19-105. The Fund does not cover employees whose employment commenced after January 1, 1954. IPC, Sec. 19-105.

The Board of Directors of the Public Libraries in a city with over 500,000 inhabitants may elect to have a Public Libraries Employees' Pension Fund, with coverage extended to:

all persons in the employ of the public library board prior to July 8, 1955 receiving a stipulated salary per annum; all persons in the employ of the board of trustees of such Public Library Employees' Pension Fund prior to July 8, 1955, receiving a stipulated salary; all persons who are contributors to this fund and have contributed to this fund for a period of at least 1 year \* \* \* IPC, Sec. 19-204.

*b. Funding*

The House of Correction Employees' Pension Fund is funded by employee contributions of 6% of salary and an additional 2% of salary contribution from male employees. IPC, Sec. 19-101. Along with these contributions the municipal authority is authorized to levy a tax on all taxable property, up to .0009 per cent of the value of such property. IPC, Sec. 19-104.

The Public Library Employees' Pension Fund is funded by contributions from the employees of 6% of salary, or more, as determined by the Board of Trustees of the plan. IPC, Sec. 19-208(1). No provision appears to be made for contributions by the governing municipality.

*c. Financing*

The city which establishes a House of Correction Employees' Pension Fund is permitted, though not compelled, to levy a property tax in addition to other property taxes, on the property within its jurisdiction, in addition to and in the same manner as other taxes. IPC, Sec. 19-104. It may be noted, however, that the statutory language

permits the levy of the tax by the city, but notes that the city council shall levy the tax at the aforementioned rate. IPC, Sec. 19-104.

No provision appears to be set up to finance the Public Library Employees' Pension Fund, other than the contributions of the employees.

*d. Fiduciary standards*

Both Boards of Trustees are permitted to invest the funds of the pensions in their discretion, with no restrictions on the type of investment, other than the general law of fiduciary responsibility. IPC, Secs. 19-109; 19-208.

Furthermore, it is a Class B misdemeanor for any person to directly or indirectly "avoid or seek to avoid any or all of the provisions of this Division, \* \* \* or obstruct the enforcement of any of the provisions of this Division." IPC, Secs. 19-118; 19-219.

B. NONSTATUTORY PLANS FOR LOCAL EMPLOYEES

There appear to be two significant pension plans for local employees within the State of Illinois: the pension plan of the Chicago Transit Authority and the pension plan of the Village of Morton Grove. The former is authorized by statute, 1113/4 Ill. Rev. Stat., Sec. 307. The latter does not appear to be statutorily authorized.

*1. The Chicago Transit Authority Pension Plan*

*a. Coverage*

The pension plan of the Chicago Transit Authority (CTA) covers all employees of the Authority. The plan's terms define "employee" to include those individuals who, on June 1, 1948, and thereafter, are receiving a "regular and stated compensation" from the Authority, who on June 1, 1948, were absent due to "leave of absence, or authorized furlough" and those individuals who, on June 1, 1948, or thereafter, were on leave of absence because of office-holding in the Association (Division 241 and Division 308 of the Amalgamated Transit Union), or its International Office or the International Office or another office of any authorized bargaining agent. Plan, Sec. 3.3. Temporary employees, defined as an employee employed by the CTA for not more than six months and who do not accumulate seniority during employment, are not included in the plan. Plan, Sec. 3.3.

*b. Funding*

Both the participants and the C.T.A. contribute towards funding the pension plan. After 1973, the employees of the CTA must contribute 7% of salary. Employees who were employed between January 1, 1965, and June 1, 1949, and whose compensation was over \$10,000 (the amount above \$10,000 not having not been covered by the plan) must remit to the Fund "the amount of contributions he should have made if annual compensation exceeding \$10,000, had been covered by the Plan \* \* \* together with an amount equal to the interest that would have been credited to the employee." Plan, Sec. 7.1.

The CTA must contribute, after 1973, 13% of the employee's salaries to the fund of the plan. It must also remit its contributions for salaries of employees between June 1, 1949 and January 1, 1965, who earned over \$10,000, which amount was not covered by the plan. Plan, Sec. 7.1.

*c. Financing*

No provisions are made for financing the contributions of the CTA to the pension plan.

*d. Fiduciary standards*

Trustees of the CTA Pension Plan must be a "bank or trust company incorporated under the laws of the United States or of the State of Illinois" with a combined capital and surplus of at least \$7,000,000. The trustee must be authorized by law to accept and execute trusts of at least 10 years in duration. Plan, Sec. 18.1. The trustee has no liability for any amounts paid under the plan, to the extent of their correctness, when the amounts are determined and certified to the trustee by the Committee on Retirement Allowance of the Pension Plan. Plan, Sec. 18.3. Powers of the trustee, with regard to investments and management of the trust assets are determined by contract between the trustee and the Committee, but the trustee must see that "the fund shall at all times be prudently invested." Plan, Sec. 18.4. The Committee may authorize:

the Trustee in its sole discretion, to invest and reinvest the Fund in any property, real or personal, or part interest therein, wherever situate, including but without being limited to common and preferred stocks, corporate and governmental obligations, trust and participation certificates, leaseholds, mortgages and other interests in realty. Plan, Sec. 18.4.

For a copy of the plan and appended agreements and interpretations of the Chicago Transit Authority, please see Appendix A.

*2. The pension plan of the Village of Morton Grove*

*a. Coverage*

The pension plan of the Village of Morton Grove, Illinois, covers all "present and future full-time Employee(s)" of the Village. The plan's definitional provision (Part I, 1.) defines "full-time Employee" as one who is employed for at least 400 hours per year, and makes one year's service a prerequisite to participation. Part I, 2.

*b. Funding*

The participating employees of the Village of Morton Grove are required to contribute 2% of Monthly Earnings toward funding the pension plan. Plan, Part I, 1.

The Village must contribute annually the amount required to keep the plan actuarially solvent, in an amount equal to that required for current service cost plus interest on any unfunded past service liability. Plan, Part II, 11.

*c. Financing*

There is no provision requiring the Village of Morton Grove to make the payments for the pension plan.

*d. Fiduciary standards*

There are no special provisions in the pension plan providing for the means by which the assets of the plan are to be invested, except that interest in an amount not exceeding 3½% annually shall be paid by the writer of the plan, Continental Assurance Company, Chicago, Illinois, on the plan assets.

*e. Legality of the plan*

The Village of Morton Grove appears to be one of a very few villages in the State of Illinois with its own municipal pension plan. Section 7 of the Illinois Pension Code establishes the Illinois Municipal Retirement Fund. The question may be raised as to violation of this statute by the establishment of the Morton Grove plan.

Section 7-132 states that the described municipalities of that provision of the Illinois Pension Code "shall be included within and be subject to this Article beginning upon the effective dates hereinafter specified." Included in the description are "all cities, villages and incorporated towns having a population in excess of 5,000 inhabitants \* \* \*." IPC, Sec. 7-132(1). Subparagraph 5 of that same section refers to these covered municipalities as "municipalities required to participate under subparagraph 1 \* \* \*." IPC, Sec. 7-132(5)(A). However, provision is also made for towns which "elect to be included either by referendum \* \* \* or by adoption of a resolution." IPC, Sec. 7-132(4). This latter provision, however, is preceded by the phrase "Any other municipality, \* \* \* other than those specifically excluded from participation and those described in paragraph 3 above \* \* \*." IPC, Sec. 7-132(4).

Section 7-132 would appear to require that in villages of 5,000 population or more, the Municipal Retirement System of the State of Illinois provided for in Article 7 of the Illinois Pension Code would appear to be the only permissible general municipal pension plan. Other plans would be in violation of the law, unless they were supplementary to a general incorporation into the Municipal Retirement System. In other words, if the Village of Morton Grove has a population over 5,000 in the last census, then it should become a member of the Illinois Municipal Retirement System. Its own pension plan, if it should become a member of the IMRS, could be valid but only supplementary to the plan of the IMRS.

The 1970 population of Morton Grove, Illinois, was set at over 26,000 by the Bureau of the Census. Therefore, its refusal to adopt the Municipal Retirement System of the State of Illinois and its adoption of its own municipal pension plan may be in violation of the Illinois Pension Code.

## APPENDIX A—THE PENSION PLAN OF THE CHICAGO TRANSIT AUTHORITY AND RULINGS THEREUNDER

This Agreement, made in triplicate as of June 1, 1949, by and between Chicago Transit Authority, a municipal corporation created by the Metropolitan Transit Authority Act of Illinois, party of the first part, and Divisions 241 and 308 of the Amalgamated Transit Union, formerly known as the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, party of the second part, as amended, Witnesseth:

### SECTION 1—TITLE

1.1. The retirement and disability allowance plan which is the subject of this agreement shall be known as "Retirement Plan for Chicago Transit Authority Employees" and is sometimes referred to in this agreement as "this Plan" or "the Plan."

### SECTION 2—PURPOSE

2.1. The object of the Plan is to provide retirement allowances in case of old age or disability for the eligible employes of the Chicago Transit Authority who are represented by said party of the second part, subject to the conditions hereinafter set forth, and for other employes to whom the Plan may be later extended as herein provided, subject to the conditions herein set forth.

### SECTION 3—DEFINITIONS

3.1. "Authority" shall mean Chicago Transit Authority.

3.2. "Association" or "Amalgamated" shall mean both Division 241 and Division 308 of the Amalgamated Transit Union.

3.3. "Employe" shall mean any employe of the Authority who:

(1) was, on June 1, 1948, or after such date in case of new employes, receiving a regular and stated compensation from the Authority, other than a retirement allowance or retainer; or

(2) was, on June 1, 1948, absent due to leave of absence, or authorized furlough (other than retirement or disability retirement) or sickness, or accident, which started subsequent to September 30, 1947; or

(3) was, on June 1, 1948, or is thereafter, on leave of absence because of holding office in the Association or its International Office or in the office of International Office of any other bargaining agent representing employes of the Authority. (Amended 1-1-68)

Any person other than one described in the last above subparagraph (3) not at work on June 1, 1948 due to leave of absence or authorized furlough (other than retirement or disability retirement)

or sickness, or accident, which absence began prior to October 1, 1947 and who was a participant under any of the former Retirement and Disability Plans in effect on October 1, 1947, shall have a retirement or disability allowance when eligible under the provisions set forth in such Plan equal to the benefits now being paid or that may in the future be paid to those retired under such Plan. However, any such person returning to regular employment with the Authority after June 1, 1948 for a period of not less than thirty (30) days will qualify as an employe under this Plan.

It is not intended to include temporary employes as defined by the Retirement Allowance Committee provided for hereinafter. Retired employes are not included, except as provided in Section 20. Any employe retired on disability previous to June 1, 1948, who returns to active duty for the Authority, after the effective date of this Plan, shall not be entitled to any of the benefits under this Plan (except those provided in Section 20) unless his period of active duty is more than three consecutive months, provided, that if he is disabled, as described in Section 12, by cause arising after his return to work, he shall be entitled to a disability allowance under this Plan, regardless of his period of service after his return to work.

3.4. "Effective date of the Plan" shall mean June 1, 1949.

3.5. "Past Service" shall mean the continuous service with the Authority, or any of its predecessor public utilities, rendered prior to the effective date of this Plan.

3.6. "Future Service" shall mean continuous service with the Authority from and after the effective date of this Plan.

3.7. "Continuous Service" shall mean service with the Authority, or any of its predecessor public utilities, from the date since which employment has remained unbroken, provided, however, that the following shall not be considered a break in continuous service:

(1) Authorized leaves of absence and authorized absence because of sickness or injury.

(2) Time spent in the service of the armed forces or the Merchant Marine of the United States or her allies during a period of emergency, or on account of compulsory military service provided the employe has returned or returns to the service of the Authority after his honorable discharge within the period described by law, if any. (See Rule 16, page 36)

(3) Termination of employment, if followed by reinstatement within (3) years after date of termination of employment, with seniority rights, in the job classification occupied at the time of termination, or termination of employment if followed by reinstatement within (3) years in another job classification, with service from date of hire prior to termination.

(4) Periods during which no services were rendered because of strikes or lockouts.

(5) Lay-off due to reduction in force if the lay-off occurred after 1930 and the employe was called back to work and pursuant to such recall returned to work prior to 1937. This subparagraph (5) applies only to employes who retire on or after January 1, 1956.

(6) Other lay-off or furlough not exceeding three (3) years, unless extended by agreement of the Authority and the Association.

Provided, however, that in calculating past service and in determining eligibility (whether based on past or future service) to a minimum retirement or disability allowance under this Plan, absence for one or more of the foregoing grounds exceeding three consecutive years shall, to the extent it exceeds such three years, be deducted in computing the length of said past service, or in determining eligibility to such minimum retirement or disability allowance. (Amended 10-26-55)

3.8. "Annual Rate of Past Service Compensation" shall mean:

As to each hourly rated employe, the average earnings for the year ended May 31, 1948 of the occupational group to which such employe belonged on May 31, 1948, or in which such employe was classified if hired subsequent to May 31, 1948, which have been determined and are hereby agreed to be as follows:\*

(1) Motormen, conductors, one-man and bus operators, and members of Division 308 carried on the "Other Train Service" payroll of the Rapid Transit Division, \$3700.00;

(2) Members of Division 241 carried on the "Carhouse" payrolls of the Surface System, \$3480.00;

(3) Members of Division 308 classified as regular and extra guards, lampmen, platform men, shopmen, roadmen or Electrical Department employes, \$3240.00;

(4) Members of Division 241 carried on the "Miscellaneous Transportation" payroll of the Surface Division, \$2940.00;

(5) Other members of Division 241 not included in the three preceding paragraphs (1), (2), and (4), and Members of Division 308 classified as porters, crossing watchmen, agents A and B, station watchmen and Stores Department employes, \$2820.00.

Provided, however, that, on the Rapid Transit Division, as to any part-time hourly rated employe or student employe who worked less than the normal scheduled hours for his occupational group during the year ended May 31, 1948, his "annual rate of past service compensation" shall be his actual total earnings for the year ended May 31, 1948, but not exceeding the applicable rate specified in the above schedule.

As to each salaried employe, the total earnings paid by the Authority to such employe for the year June 1, 1947 to May 31, 1948. If the services of such employe did not cover the entire year June 1, 1947 to May 31, 1948, the "annual rate of past service compensation" shall be determined by multiplying by twelve the average monthly earnings of said employe paid by the Authority in the period between June 1, 1947 and May 31, 1948, but not less than twelve times the monthly job classification rate on May 31, 1948 of such employe. If such employe did not work during the year June 1, 1947 to May 31, 1948, the "annual rate of past service compensation" shall be the monthly rate on May 31, 1948 of the job such employe held when his absence began, multiplied by twelve. As to each salaried employe hired after May 31, 1948, the "annual rate of past service compensation" shall be the monthly job classification rate on May 31, 1948 of the job for which the employe was hired, multiplied by twelve.

\* NOTE—For Annual Rate of Past Service Compensation as to each eligible hourly-rated employe not included in the above classification, see Appendices A and B, pages 29-33.

As to an employe absent on account of a position with the Association or its International Office, or with the office or International Office of any other bargaining agent representing employes of the Authority "annual rate of past service compensation" shall be determined in accordance with this paragraph on the basis of the job classification last held with the Authority or any of its predecessor public utilities by such employe. (Amended 1-1-68)

3.9. "Compensation" shall mean as to future service and as to the contributions to the Fund provided for hereinafter, the total earnings paid by the Authority to a participating employe on or after the effective date of the Plan. (Amended 1-1-65)

As to those occupying full-time positions with the Association or its International Office, or with the Office or International Office of any other bargaining agent representing employes of the Authority, "compensation" shall mean the current average pay hours for employes working in the job classification last held, multiplied by the rate currently in effect for that job classification. As to those who are in part-time positions with the Association or its International Office, or with the office or International Office of such other bargaining agent "compensation" as defined above, shall also include the earnings which he would have received from the Authority if he had not been absent on account of such part-time position. (Amended 1-1-68)

"Average annual compensation in the highest five (5) completed Plan Years" shall mean that amount determined by dividing by five (5) the total Compensation, as defined herein, of the employe in those five (5) Plan Years within the ten (10) Plan Years immediately prior to his normal retirement date (or, if earlier, the effective date of retirement) in which his Compensation was greatest. (Amended 1-1-71)

3.10. "Committee" shall mean the Retirement Allowance Committee described hereafter.

3.11. "Fund" shall mean the moneys and property due to or in the hands of the Trustee including payments by the employes and the Authority plus the income or other proceeds from investments, less disbursements for benefits and expense.

3.12. "Trustee" shall mean the bank or trust corporation selected to administer the Fund.

3.13. Beginning January 1, 1953, "Plan Year" shall be the calendar year. (Amended 12-1-52)

3.14. The masculine pronoun wherever used shall include the feminine pronoun, and the singular, the plural.

#### SECTION 4—PARTICIPATION IN THE PLAN

4.1. Subject to paragraph 4.2, all employes, as defined above, shall come under this Plan and continue as contributing employes so long as they are in the employ of the Authority in an occupation or position to which this agreement applies or may hereafter be made to apply.

4.2. This agreement shall apply, in the first instance, only to the employes represented by said party of the second part; it may be made applicable to other employes or groups of employes of the Authority by agreement between the Authority and such other employes, either individually or when represented by a bargaining agent, then with such bargaining agent.\*

\* See Appendices A, B and C.

## SECTION 5—RETIREMENT ALLOWANCE COMMITTEE

5.1. A committee shall be established to be known as the "Retirement Allowance Committee." Said committee shall consist of ten (10) members. Five (5) members shall be appointed by the Chicago Transit Board and said Board shall have the right at any time and for any period to replace any member appointed by it. Three (3) members shall be appointed by Division 241 of the Amalgamated Transit Union, one (1) member shall be appointed by Division 308 of the Amalgamated Transit Union, and each Division shall have the right at any time and for any period to replace any member appointed by it, and one (1) member shall be appointed to represent the employes who are not represented by the Association for the purpose of collective bargaining with the Authority, and be appointed by them or their representatives.

5.2. All members of the Committee shall have alternates who shall be appointed in the same manner provided in paragraph 5.1. A majority of the members of each unit as defined in paragraph 5.4 shall constitute a quorum.

5.3. The Committee shall select from its membership a Chairman and a Secretary. All members of the Committee shall serve without compensation.

5.4. The members appointed by the Chicago Transit Board shall vote as a unit. The members appointed by the Association and the other employes, respectively, shall also vote as a unit. Unit vote shall be determined by a majority of the members of each unit. A concurrence of the two units shall be final and binding upon all interested parties. In the event of a tie vote, the question or questions in issue shall be submitted to arbitration upon demand of either party.

The Board of Arbitration shall consist of three (3) persons, one (1) to be selected by the Chicago Transit Board, and the other by the Association, and these two (2) persons shall select a third disinterested person. The Board of Arbitration shall have the power to render a final and binding award by a majority vote on matters submitted to it for arbitration. The expense of the neutral person, as well as the joint expenses incidental to his activities shall be borne by the Fund.

5.5. The Secretary of the Pension Committee shall act upon all routine matters in connection with the administration of the Plan and shall keep a record of the proceedings of the Committee.

5.6. The Committee shall have power:

(1) To make and enforce such rules and regulations consistent with the provisions of this agreement as in its opinion may be necessary, or desirable, for carrying out of its duties, and for the efficient administration of the Plan;

(2) to decide any question arising in the administration, interpretation and application of this Plan;

(3) to determine, according to the provisions herein set forth the eligibility of an employe for old-age retirement and disability allowance under this Plan and, if eligible, his rights hereunder;

(4) to certify to the Trustee the name of each employe eligible for a refund or old-age retirement or disability allowance and the amount payable to him and to rescind such certification in accordance with the provisions of this Plan;

(5) to approve or deny any application for an optional form of payment or retirement allowances, and to formulate rules with respect to the election of, and payments under, any such optional form of payment, which rules, however, shall not be inconsistent with the provisions of this Plan. (Amended 1-1-71)

5.7. The Committee may employ from time to time such legal and other experts as it may deem necessary.

5.8. The Committee shall hold meetings at such times as it shall determine, but not less than one (1) meeting each month. It shall make an annual report to the Authority and the Association, and shall make such other reports of the operation of the Plan as it shall deem necessary. At least once a year the Committee shall have an audit made of the funds forwarded to, disbursed and held by the Trustee by a recognized firm of certified public accountants. A statement of the results of such audit shall be forwarded to the Authority and the Association and the duly appointed representatives of any other employees.

5.9. All necessary expenses incurred by the Committee shall be certified by the Committee to, and paid by, the Trustee out of the funds held by it.

5.10. Members of the Committee shall not be personally liable for any act done by them in performance of their duties as members of the Committee and shall be indemnified by the Fund against any and all liability and expenses reasonably incurred in connection with any action to which they may be a party by reason of their membership in the Committee, provided, however, that the foregoing shall not apply to any member who shall be adjudged guilty of misconduct.

#### SECTION 6—RECORDS

6.1. The Authority shall keep all records, compile all data, accept all written communications from participating employees and their beneficiaries addressed to the Committee and submit such communications to the Committee for processing in accordance with the provisions of this Plan, so far as its employees are concerned. The actual cost and expense to the Authority in performing such duties shall be certified by the Authority to the Committee and upon approval by the Committee shall be paid by the Trustee out of the Fund.

6.2. The Committee shall have the right at all times to call for additional information concerning any or all applications forwarded to the Committee and to examine all records or data pertaining to the Plan.

#### SECTION 7—CONTRIBUTIONS TO THE FUND

7.1. Except as limited by Paragraph 9.3 hereof, the contributions of the Authority and of the employee shall be the stated percentage of compensation effective the first payroll respectively for the periods indicated below:

<i>Period</i>	<i>Percent</i>
January 1, 1971 to May 31, 1971:	5.8
Employee -----	5.8
Authority -----	10.2
June 1, 1971 to December 31, 1973:	
Employee -----	7.0
Authority -----	13.0

After 1973, contributions will continue at 7.0% for the employe and 13.0% for the Authority unless amended in accordance with the provisions of Section 23. (Amended 1-1-71)

An employe on January 1, 1965, whose compensation in prior years beginning on or after June 1, 1949, has exceeded an annual rate of \$10,000 which excess amount was not covered by the Plan prior to January 1, 1965, shall remit to the Fund the amount of contributions he should have made if annual compensation exceeding \$10,000, had been covered by the Plan, beginning June 1, 1949, together with an amount equal to the interest that would have been credited to the employe under the Plan on the contributions based on such excess compensation if such contributions had been required beginning with the effective date of the Plan.

The Authority shall likewise remit to the Fund, an amount equal to the contributions which would have been made beginning with the effective date of the Plan, if there had been no limitation on the amount of annual compensation covered by the Plan. (Amended 1-1-65)

7.2. The contributions by all participating employees receiving compensation from the Authority shall be made by means of deductions on each pay-day.

7.3. Officers and representatives of the Association or its International Office, whether in full-time or part-time positions, who are employes of the Authority on leave of absence, shall transmit their contributions each month to the Authority, except insofar as any part thereof has been deducted under paragraph 7.2.

7.4. The total contributions of the employees and the Authority shall be forwarded by the Authority to the Trustee not later than the end of each month for all contributions made as to pay periods ending in the preceding month.

7.5. All payments and benefits provided for in this Plan (including the Supplemental Benefits provided in Section 22 hereof) shall be made from the Fund and there shall be no obligation on the part of the Authority or the employes to provide for payment of benefits from any other source; and there shall be no liability on the Authority or employes to make any contributions other than those specified in paragraph 7.1 and paragraph 21.1(1) and paragraph 22.2 hereof.

#### SECTION 8—RETIREMENT ALLOWANCE

8.1. An employee retiring at the normal retirement date as set out in paragraph 9.1 shall receive an annual retirement allowance paid in equal monthly installments for life which shall be computed according to the following formula:

(1) As to an employe who first became entitled to a retirement allowance commencing after the month of January 1968:

(a) One (1) per cent of his annual rate of past service compensation as defined in paragraph 3.8 for each full year of continuous service from the date of original employment to the effective date of the Plan, plus

(b) One and two-thirds (1 $\frac{2}{3}$ ) percent of the employe's compensation for continuous service from and after the effective date of the Plan;

Provided, however that :

(2) As to an employe who first becomes entitled to a retirement allowance commencing with or after the month of January, 1971, the retirement allowance shall be the amount determined in accordance with paragraph one (1) above or the amount determined in accordance with the following formula whichever is greater:

(a) Three-quarters ( $\frac{3}{4}$ ) of one per cent of his "average annual compensation in the highest five completed Plan Years" for each full year of continuous service from the date of original employment to the effective date of the Plan; plus

(b) One and one-half ( $1\frac{1}{2}$ ) per cent of his "average annual compensation in the highest five completed Plan Years" for each year (including fractions thereof to completed calendar months) of continuous service from and after the effective date of the Plan and prior to his normal retirement date.

(Amended 1-1-71)

8.2. If the employe has had twenty (20) years of continuous service and has attained the age of of sixty-five (65) years or more such allowance shall be not less than

(a) One-Hundred Seventy-Five Dollars (\$175.00) per month if he shall first become entitled to a retirement allowance commencing after the month of December, 1970; or

(b) One-Hundred Eighty Dollars (\$180.00) per month if he shall first become entitled to a retirement allowance commencing after the month of December, 1971; or

(c) One-Hundred Eighty-Five Dollars (\$185.00) per month if he shall first become entitled to a retirement allowance commencing after the month of December, 1972.

(Amended 1-1-71)

8.3. The old-age retirement provided for in this section shall in no event be in excess of sixty (60) per cent of the employe's average annual compensation in the highest five (5) completed Plan Years as defined in Paragraph 3.9. No employe shall be eligible to receive a retirement allowance unless he shall have been employed for at least three (3) years of continuous service, as above defined. (Amended 1-1-71)

#### SECTION 9—NORMAL RETIREMENT DATE

9.1. The normal retirement date shall be the first day of the month following the employe's sixty-fifth (65th) birthday.

9.2. Any employe who has attained the normal retirement date may retire voluntarily or may be retired at the option of the Authority at or at any time after such normal retirement date. Upon such retirement he shall be entitled to such old-age retirement allowance for life as provided in the Plan. (See Rule 15, Page 36)

9.3. If any employe continues in the service of the Authority after attainment of the normal retirement date, the old-age retirement allowance payable to such employe shall not commence until after his actual retirement. After his normal retirement date no employe shall make the contributions prescribed in Section 7 nor shall the Authority make any contributions with respect to the compensation of such employe. If the employe reaches age sixty-five (65) after the effective

date of the Plan, he shall receive no credit under paragraph 8.1(1)(b) and 8.1(2)(b) for any service after age sixty-five (65). (See Rule 3, Page 34) (Amended 1-1-71)

#### SECTION 10—EARLY RETIREMENT

10.1 Any employe in good standing may retire voluntarily on or after January 1, 1971, and after he

(a) Has attained the age of fifty-eight (58) years, or

(b) Has attained an age and completed a period of continuous service such that the sum of his age and years of service shall equal ninety-six (96) or more (Amended 1-1-71)

and shall receive an old-age retirement allowance for life reduced in accordance with Paragraph 10.2.

After December 31, 1960, any employe who is discharged by the Authority for cause detrimental to the service or any employe who is charged with an offense or breach of duty which ultimately results in such discharge shall not be eligible for early retirement under Section 10 unless the employe is reinstated and complies with the other applicable provisions of the Plan. (Amended 5-1-69)

10.2 In the event of such early retirement after the month of December, 1970, the employe shall receive his earned retirement allowance, computed at and up to such early retirement date, reduced by five (5%) per cent for each full year or fraction thereof below age sixty-five (65), provided, however, that:

(a) The employe's earned retirement allowance computed at and up to such early retirement date shall not be reduced:

(i) If he shall retire on or after the first day of the month following his sixtieth (60th) birthday provided the sum of his age and years of continuous service shall equal ninety (90) or more; or

(ii) If the sum of his age and years of continuous service shall equal ninety-six (96) or more; and

(b) If, after the month of December, 1970, the employe retired at or after age fifty-eight (58) and his age and years of continuous service shall equal ninety (90) or more, his retirement allowance shall be reduced as follows:

Age last birthday at early retirement date:	Amended January 1, 1971	Percent of reduction
59 -----		3.0
58 -----		7.0

10.3. Any employe who, under the provisions of paragraph 3.3, is limited as to eligibility and amount of benefits to the provisions of any former Retirement and Disability Plan in effect on October 1, 1947, may retire after he has attained the age of fifty-five (55) if then otherwise qualified under any such Plan, and shall receive the benefits now being paid or that may in the future be payable to those retired under any such former Plan, reduced by five (5%) per cent for each full year or fraction thereof below age sixty-five (65). (See Rule 4, Page 34)

#### SECTION 11—TEMPORARY CONTINUANCE OF OLD COMMITTEES

Not currently applicable. Text of original section available in the Committees Files.

## SECTION 12—DISABILITY ALLOWANCE

12.1. Any employe who, after the effective date of the Plan, shall become disabled (as defined below) from performing his duties and from following his regular employment with the Authority due to an occupational or non-occupational accident or sickness before becoming eligible for an old-age retirement allowance in accordance with Section 9 hereof, shall be entitled to a monthly disability allowance from the beginning of such disability, provided however that:

- (a) As to an employe who first became disabled prior to the month of January, 1971, he had been at, the time of becoming so disabled, in continuous service for ten (10) years or more: or
- (b) As to an employe who first became disabled on or after January 1, 1971, he has been, at the time of becoming so disabled:
  - (i) for non-occupational injuries or illnesses, in continuous service for ten (10) years or more: or
  - (ii) for occupational injuries or illnesses covered under the Workmen's Compensation Act, in continuous service for five (5) years or more. (Amended 1-1-71)

An employe is disabled from performing his duties and from following his regular employment with the Authority:

- (1) When he is totally and permanently disabled for any type of work: or
- (2) When, after receiving benefits for a particular disability for twenty-six (26) weeks under the Authority's Group Accident and Sickness Insurance or from the Authority under the Workmen's Compensation Act, he is unable to return to his regular duties. (See Rule No. 1, Page 34).

He shall not be entitled to receive any disability allowance for any period for which he, although unable to return to his regular duties, refuses to accept other work offered by the Authority which, in the judgment of a physician duly selected by the Committee, he is capable of performing and which pays not less than two-thirds ( $\frac{2}{3}$ ) of the earnings which would have accrued to him if he had been currently employed in the job classification last held by him with the Authority.

No employe shall receive a disability benefit under this Section 12 at the same time he receives a retirement allowance under Section 8 or 10 hereof. (See Rule 15, page 36)

12.2. The monthly disability allowance shall be computed in the manner provided in Section 8 above, provided that the monthly disability allowance shall be no more than the maximum specified in Paragraph 8.3 above and shall in no event be less than

- (a) One-Hundred Seventy-Five Dollars (\$175.00) per month if he shall first become entitled to a retirement allowance commencing after the month of December, 1970: or
- (b) One-Hundred Eighty Dollars (\$180.00) per month if he shall first become entitled to a retirement allowance commencing after the month of December, 1971: or
- (c) One-Hundred Eighty-Five Dollars (\$185.00) per month if he shall first become entitled to a retirement allowance commencing after the month of December, 1972. (Amended 1-1-71)

12.3 No employe shall be entitled to receive a disability allowance under this Plan if and when the disability is a result of:

- (1) habitual and excessive use of intoxicants, drugs, or narcotics;
- (2) injuries or diseases sustained while under the influence of intoxicants, drugs or narcotics habitually used to excess;
- (3) injuries or diseases sustained while wilfully and illegally participating in fights, riots, civil insurrections or committing a crime;
- (4) injuries or diseases sustained while serving in the armed forces or the Merchant Marine of the United States or her allies;
- (5) injuries or diseases incurred while working for another employer and arising out of such other employment while also employed by the Authority;
- (6) injuries or diseases sustained while riding in aircraft, except as a fare-paying passenger on regular licensed and scheduled air lines;
- (7) injuries or diseases sustained while the employe is on leave of absence for any reason, other than (a) holding office in the Association or its International Office, or in the office or International Office of any other bargaining agent representing employes of the Authority; or (b) sickness or accident; provided, however, that an employe while on leave on absence for the reasons listed under (a) and (b) shall not be eligible to benefits if the injuries or diseases so sustained fall within subparagraphs (1) and (6) above. (Amended 1-1-68)

12.4 No employe shall be entitled to receive a disability allowance under the Plan when he declines to permit a physician selected by the Committee to examine or re-examine him or materially hinders an investigation ordered by the Committee.

12.5 If, at any time, the Committee finds that any employe receiving a disability allowance is no longer disabled as defined above, it shall order the discontinuance of the payments provided for in this section. In that event, the employe shall be restored to his former position with accumulated seniority.

12.6 If an employe entitled to disability allowance is entitled to benefits under the group accident and sickness policy provided by the Authority, he shall receive as a disability allowance under this Plan only the excess, if any, of the disability allowance over the monthly benefits under the group accident and sickness policy. An employe shall not receive a disability allowance for any period for which he receives his regular wages or salary. (See Rule 4, Page 34)

#### SECTION 13—PAYMENT OF OLD-AGE RETIREMENT AND DISABILITY ALLOWANCES

13.1 Retirement and disability allowancees, as specified herein, shall be paid on the last day of each month for which such allowance is due.

13.2. The normal form of payment of old age retirement allowances, as specified in Paragraph 8.1, Paragraph 10.1 and Paragraph 13.1, hereof is a monthly benefit payable for the remainder of the employe's lifetime. Subject to the provisions of this Section 13, and in lieu of the amount and form of monthly retirement allowance other-

wise payable hereunder pursuant to Section 8 or Section 10 hereof, in the event of normal or early retirement, an employee may, subject to the consent of the Committee, elect to have a retirement allowance of equivalent actuarial value payable in accordance with the following optional form of payment:

A reduced monthly retirement allowance payable to the retired employee during his or her remaining lifetime and, if such retired employee shall predecease the spouse designated by such retired employee in accordance with the provisions hereof, all or a specified fractional part— $\frac{1}{2}$  or  $\frac{2}{3}$  thereof, as specified by the employee in his election—of such reduced monthly amount payable to the spouse for the then remainder of his or her lifetime.

Each request for an optional form of payment must be in writing, on a properly executed form provided for that purpose and filed with the Committee. Each such form must specify the scheduled commencement date of retirement allowance payments under the optional form elected, which date, however, may not be later than the last day of the month next following the month in which the employee's normal retirement date occurs. If the scheduled commencement date is within the six-month period next following the date on which such request is filed with the Committee, such evidence of the employee's good health as may be deemed satisfactory by the Committee may be required by the Committee: provided, however, that such evidence of good health shall not be required if the request is filed with the Committee prior to December 31, 1971. An employee may, at any time prior to his normal retirement date or, if applicable, his early retirement hereunder, elect to cancel or change the optional form of payment previously approved by the Committee in respect of him, but each such change shall be deemed a new election and shall be treated as such in accordance with the provisions of this section.

The election of, and payment under, the optional form pursuant to the provisions of this section shall be subject to the following conditions:

(1) Retirement allowance payments under the optional form of payment will be payable as of the last day of each month. The first such payment to the retired employee will be paid on the last day of the month next following his retirement date and the last such payment will be the payment due as of the last day of the month coincident with or next preceding the date of the retired employee's death. If the retired employee shall predecease his or her spouse, and such spouse shall have been designated in accordance with the provisions hereof, such reduced benefit or the applicable fractional part thereof, as specified by the retired employee, shall be payable to such spouse commencing on the last day of the month in which the retired employee's death occurs and ending with the last day of the month coincident with or next preceding the date of the surviving spouse's death.

(2) If the continuous service of an employee shall terminate, or if the employee shall die prior to his normal or, if applicable, his early retirement date hereunder, the optional form elected by such employee shall be cancelled automatically.

(3) If the spouse designated by the employee shall die prior to the employee's normal retirement date or, if applicable, his early

retirement hereunder, the optional form of payment elected shall be cancelled automatically and a monthly retirement allowance of the normal form and amount shall be applicable to such employe upon his retirement hereunder, unless, prior to his normal retirement date, a new election shall have been effected in accordance with the provisions of this section.

(4) If an optional form of payment shall have been made effective in respect of an employe whose actual retirement has been deferred beyond his normal retirement date pursuant to the Provisions of Paragraph 9.3 hereof, retirement income payments shall commence under the option, notwithstanding the scheduled commencement date thereof, as of the last day of the month in which the employe (i) dies, or (ii) retires, whichever first occurs in an amount determined as if the employe had in fact retired on his normal retirement date.

(5) If an employe shall have a living spouse to whom he or she is legally married on the date the election of the optional form of payment is filed with the Committee, such spouse shall be designated the contingent annuitant under such election. If any other person shall be designated, the election shall be invalid for all purposes hereof.

(6) Notwithstanding the provisions of Paragraphs 15.2 and 15.3, if upon the death of an employe after his normal retirement date, or, if applicable, his early retirement, a retirement allowance shall be payable to the spouse pursuant to the optional form of payment effected hereunder, no refund of the employe's contributions and interest shall be payable until the death of such spouse—at which time the amount of Refund payable shall be the excess, if any, of (i) the amount otherwise determined in respect of him pursuant to the provisions of paragraph 15.3 at the date of the employe's or retired employe's death over (ii) the aggregate of payments made to such spouse.

#### SECTION 14—PAYMENT OF ALLOWANCES IN CASE OF INCOMPETENCY

14.1 In case of incompetency, either mental or physical, of any person eligible to receive payments under the provisions of the Plan, payments shall be made to such person or institution that has satisfied the Committee as to his or its right to receive the payments for said eligible person.

#### SECTION 15—REFUNDS FROM EMPLOYEES' CONTRIBUTIONS AND PAYMENT OF DEATH BENEFIT

15.1 No employe shall be entitled to borrow against or withdraw any part of the contributions to the Plan so long as he remains eligible to participate in the Plan.

15.2 Contributions made from and after the effective date of the Plan by any employe who becomes separated from the service of the Authority or dies prior to retirement or disability shall be refunded with interest at the rate hereinafter specified, less benefits received under the Plan; however:

(a) An employe who has completed less than ninety (90) days of service with the Authority shall be entitled to no Refund. (See Rules 10 and 11, Page 35-36)

(b) An employe who has completed ninety (90) or more days of service but less than one year of service with the Authority shall be entitled to a Refund of Retirement Contributions without interest. (See Rule 17, Page 37)

(c) An employe who has completed one year or more of service with the Authority shall be entitled to a Refund with interest, as provided in Paragraph 15.6. (Amended 1-1-71)

Any employe whose contributions under this or any prior Plan have been refunded to him in whole or in part shall be entitled to no further rights, benefits or allowances under this Plan or any prior Plan, except as provided in the following subparagraphs:

(1) If any employe who received a refund returns to work after service within the terms of paragraph 3.7(2) or is reinstated within the terms of paragraph 3.7(3) and remits to the Authority for payment into the Fund the amount previously refunded to him, he shall have the same rights under the Plan that he would have had if he had not received the refund; (See Rule No. 9, Page 35)

(2) if an employe who received a refund is not reinstated within the terms of paragraph 3.7(3) but returns to work as a new employe he shall have only the rights of a new employe under this Plan and no service prior to the date of the new employment shall be credited as continuous Service.

(3) Refund of excess contributions under paragraph 19.3 shall not affect any rights under the Plan.

15.3. On the death of an employe after his old-age retirement allowance has become effective, there shall be paid from the Fund a sum equal to the amount by which the aggregate of the employe's contributions since the effective date of the Plan plus interest as hereinafter defined have exceeded the aggregate of all benefits received by him.

15.4. Contributions made prior to the effective date of this Plan shall be subject to refund in accordance with the terms, limitations and provisions of the several Plans under which such contributions were made.

Money deducted from the employes' compensation by the Authority since October 1, 1947, for the account of Pension Fund No. 1 of Chicago Rapid Transit Company employees, shall be treated, for the purpose of this Section, as if they had been paid into said Pension Fund No. 1.

15.5. All payments provided for in paragraphs 15.2, 15.3 and 15.4 shall be made, under such rules and regulations as the Committee may establish.

15.6. Interest on contributions, as provided for in this Section, shall be computed:

(a) With respect to Plan Years ending on or before December 31, 1970, at the rate of interest earned by the Fund but not greater than two percent (2%) per annum, beginning with the end of the Plan Year in which the contributions were made and ending with December 31, 1970, and

(b) With respect to Plan Years beginning on or after January 1, 1971, at one-half (1/2) of the rate of interest earned by the Fund but not greater than three percent (3%) per annum, beginning with:

- (i) December 31, 1970, in respect of the accumulated amount determined pursuant to (a) above, at such date, and
- (ii) The end of the Plan Year beginning on or after January 1, 1971, in which further contributions were made

up to the last day of the Plan Year preceding the day on which the employe becomes separated from the Authority's service, dies or retires, whichever occurs first. (Amended 1-1-71)

The "rate of interest earned by the Fund" for each Plan Year shall be the rate percent obtained by dividing the net income of the Fund for that year by the total amount of employe contributions under the Plan up to the end of such Plan Year; however, should the average amount invested during such Plan Year be greater than the total amount of such employe contributions then the net income shall be divided by such average invested amount. In determining net income there shall be taken into account net gains or losses on sales of securities and all charges against the Fund, but contributions, benefits and refunds shall not be taken into account in determining net income. In determining the total amount of employe contributions in the above formula refunded contributions and contributions by employes receiving retirement or disability benefits under the Plan shall not be included.

15.7. A death benefit shall be paid from the Fund upon the death of a retired employe as follows:

(a) As to an employe who first became entitled to a retirement allowance commencing any month from January, 1965, to April, 1969, inclusive:

As to any such employe who retired at or after age sixty-five (65) with twenty (20) years continuous service at age sixty-five—\$4,000.00

As to any such employe who retired at or after age sixty-two (62) and prior to age sixty-five (65) with twenty (20) years continuous service—\$3,000.00

As to any such employe who retired at or after age fifty-eight (58) and prior to age sixty-two (62) with twenty (20) years continuous service—\$2,500.00

As to any such employe who retired with less than twenty (20) years continuous service or whose retirement occurred prior to his attainment of age fifty-eight (58)—\$1,000.00

(b) As to an employe who first became entitled to a retirement allowance commencing after the month of April 1969:

As to any such employe who retired at or after age sixty-five (65) with twenty (20) years of continuous service at age sixty-five (65); or who retired at or after age sixty-two (62) and the sum of whose age and years of continuous service then was ninety-two (92) years or more; or the sum of whose age and years of continuous service at his retirement date was ninety-eight (98) or more—\$4,000.00

As to any such employe who shall not qualify under the foregoing provisions of this subparagraph 15.7(b) and who retired at or after age sixty-two (62) and prior to age sixty-five (65) with twenty (20) years continuous service; or who retired at or after age fifty-nine (59) and prior to sixty-two (62) and the sum of whose age and years of continuous service then was ninety-two (92) or more—\$3,000.00

As to any such employe who shall not qualify under the foregoing provisions of this subparagraph 15.7(b) and who retired at or after age fifty-eight (58) and prior to age sixty-two (62) with twenty (20) years continuous service—\$2,500.00

As to any such employe who retired with less than twenty (20) years continuous service or whose retirement occurs prior to his attainment of age fifty-eight (58)—\$1,000.00 (Amended 5-1-69)

(c) As to an employe who first became entitled to a retirement allowance commencing after the month of December, 1970:

As to any such employe who retired at or after age sixty-five (65) with twenty (20) years of continuous service at age sixty-five (65); or who retired at or after age sixty (60) and the sum of whose age and years of continuous service then was ninety (90) or more; or the sum of whose age and years of continuous service at his retirement date was ninety-six (96) or more—\$4,000.00

As to any such employe who shall not qualify under the foregoing provisions of this subparagraph 15.7(c) and who retired at or after age sixty (60) and prior to age sixty-five (65) with twenty (20) years continuous service; or who retired at or after age fifty-eight (58) and prior to age sixty (60) and the sum of whose age and years of continuous service then was ninety (90) or more—\$3,000.00

As to any such employe who shall not qualify under the foregoing provisions of this subparagraph 15.7(c) and who retired at or after age fifty-eight (58) and prior to age sixty (60) with twenty (20) years continuous service—\$2,500.00

As to any such employe who retired with less than twenty (20) years continuous service or whose retirement occurs prior to his attainment of age fifty-eight (58)—\$1,000.00 (Amended 1-1-71)

15.8 A death benefit shall be paid from the Fund upon the death on or after January 1, 1971, of a retired employe who shall not qualify under the foregoing paragraph 15.7 and who shall have become entitled to a retirement allowance commencing for any month prior to December, 1962, as follows:

(a) As to an employe who first became entitled to a Retirement Allowance commencing any month prior to June, 1957, \$1,000.00, regardless of age and service.

(b) As to employe who first became entitled to a Retirement Allowance commencing any month from June, 1957, and prior to December, 1962, \$500.00. (Amended 1-1-71)

#### SECTION 16—NO REFUNDS FROM AUTHORITY'S CONTRIBUTIONS

16.1 There shall be no refunds allowed the Authority from its contributions.

## SECTION 17—NO ASSIGNMENTS, ETC.

17.1 The rights of any employe are limited to those specifically set forth in this agreement. He shall, however, have the unqualified right to name any person or persons as his beneficiaries or alternate beneficiaries under the Plan and to change the same from time to time. The designation of a beneficiary shall be made by the employes on a form provided by and filed with the Committee. No disposition, assignment, transfer, charge or encumbrance of the Fund or any part thereof, or of any right to receive a retirement or disability allowance or refund, by any employe or beneficiary hereunder by way of anticipation shall be of any validity or legal effects, or be in any wise regarded by the Trustee, and the Fund, or any part thereof, shall not be in any wise liable to any claim of any creditor of any such employe or beneficiary, and disbursements by way of benefits or refunds from the Fund shall be made only to the employe or beneficiary (or his legal representative) upon and in accordance with directions of the Committee to the Trustee. (Amended 6-1-52)

Provided however, an employe retiring under the Plan, desiring the Group Hospital and Surgical Insurance made available for the employe and eligible dependents, by the Authority, in the then existing labor agreement between the parties for active employes, or an employe who immediately prior to retirement was covered through payroll deductions by Blue Cross or Blue Cross/Blue Shield made available by Hospital Service Corporation and Illinois Medical Service and who desires to continue such coverage upon retirement, may authorize the Committee in writing to deduct monthly from his benefits due under the Plan, an amount to cover his monthly premium or rate. The deducted amounts shall be paid out at the direction of the Committee for such premiums or rate. (Amended 1-1-71)

Further provided however, an employe retiring under the Plan shall have the unqualified right to authorize the Committee in writing to deduct the amount to cover his monthly UNION Dues; the employe may rescind this authorization at any time in writing. Amended 1-1-71)

## SECTION 18—TRUSTEE

18.1. The Trustee shall be selected and appointed by the Committee. The Trustees shall administer the Fund. The Trustee shall be a bank or trust company incorporated under the laws of the United States or of the State of Illinois, having its principal place of business in the City of Chicago and having a combined capital and surplus aggregating at least seven million dollars, and which shall have been in existence and authorized by law to accept and execute trusts for a period of not less than ten (10) years preceding the date of the appointment. In case of the resignation, removal or inability to act of said Trustee, or any successor Trustee, a successor Trustee, with like qualifications, shall be selected and appointed by the Committee. Any Trustee or successor may be removed by the Committee at any time.

18.2. All Trustee charges shall be subject to approval by the Committee and when so approved shall be paid out of the Fund held by the Trustee in the name of the Plan.

18.3. It is agreed that the Trustee shall have no liability as to the correctness of the amounts to be paid under this Plan when such amounts are determined and certified to the Trustee by the Committee, nor shall the Trustee have any liability as to the correctness of the amounts to be received from the Authority and from the employes for the purpose of depositing the same with the Trustee when such amounts are determined and certified to the Trustee by the Committee.

18.4. The Committee is authorized to enter into any and all agreements with the Trustee that the Committee may deem advisable for carrying out the provisions of this Plan and for the administration of the Fund to be created hereunder, including the powers to be exercised by the Trustee in making investments and reinvestments to the end that the Fund shall at all times be prudently invested; the Compensation and expenses of the Trustee, and any and all other matters in accordance with the terms of the Plan deemed desirable by the Committee, and such agreements shall be binding and conclusive on the parties hereto, the Committee, and all employes and persons entitled to old-age retirement or disability allowances or other payments under this Plan, and the Trustee, acting hereunder and in accordance herewith, shall thereby incur no obligation whatsoever except as provided thereby and in this Plan. Pursuant to the foregoing, the Committee may authorize the Trustee in its sole discretion, to invest and reinvest the Fund in any property, real or personal, or part interest therein, wherever situate, including but without being limited to common and preferred stocks, corporate and governmental obligations, trust and participation certificates, leaseholds, mortgages and other interests in realty. (Amended 1-1-65)

18.5. The initial trust agreement entered into between the Committee and the Trustee in accordance with this section, or any modifications thereof, shall be subscribed by the Authority and the Association.

#### SECTION 19—DISPOSITION OF EXISTING PENSION FUNDS

Not currently applicable. Text of original section available in the Committees Files.

#### SECTION 20—PRESENT PENSIONERS

20.1. The following provisions shall apply to certain employes who have retired and are receiving retirement or disability allowances in accordance with the agreement referred to in Section 19, except the Paragraph 20.5 and 20.6 shall also apply to the employes described therein. (Amended 1-1-71)

20.2. All retirement or disability allowances referred to in Section 20.1 shall become a liability of the Fund established under this Plan and shall be paid from said Fund subject to the provisions of this Plan.

20.3. The retirement or disability allowance of an employe retired on or after June 1, 1948, and drawing an allowance on the effective date of this Plan, shall be recalculated on the basis of the formula set forth in this Plan and Payment of such recalculated retirement allowance shall be made retroactive to the date of his retirement or to the time when his disability allowance commenced.

20.4. The retirement or disability allowance of each employee retired prior to June 1, 1948, shall be increased by Ten Dollars (\$10.00) per month from and after the effective date of this Plan, and shall be increased an additional Ten Dollars (\$10.00) per month, effective January, 1965. (Amended 1-1-65)

20.5. The monthly retirement or disability allowance for each employee who first became entitled to a retirement allowance commencing with or prior to the month of January, 1968 shall be, effective for months from and after January 1, 1968, an amount equal to the sum of:

(1) Twenty Dollars (\$20.00), of which Ten Dollars (\$10.00) is in lieu of cost of living.

(2) The monthly amount determined as if the provisions of the Plan as in effect on December 31, 1967 had continued in effect with respect to such employee.

20.6. The monthly retirement or disability allowance for each employee who first became entitled to a retirement allowance commencing with or prior to the month of December, 1970, shall be, effective for months from and after January 1, 1971, an amount equal to the sum of:

(1) The monthly amount determined as if the provisions of the Plan as in effect on December 31, 1970, had continued in effect with respect to such employee; and

(2) Ten dollars (\$10.00) effective January 1, 1971; and

(3) An additional ten dollars (\$10.00) effective July 1, 1972, and thereafter.

#### SECTION 21—DISTRIBUTION OF FUNDS IN EVENT OF ABANDONMENT OF PLAN

21.1. While it is the intent of the parties hereto to maintain an old-age retirement and disability allowance plan permanently, however, in the event the Plan is abandoned in the future, the following provisions shall control:

(1) The Authority agrees to pay (from and after the date of such abandonment) to each employee retired or disabled prior to June 1, 1948, the monthly benefits for life or for the duration of the disability, as the case may be, to which he is entitled at and immediately prior to the date of such abandonment.

(2) The Trustee shall determine the assets of the Fund as of the date of abandonment and shall allocate such assets pursuant to the following priorities as of the date of any such abandonment:

(a) An amount shall be allocated to the account of each participating employee equal to his own contributions from June 1, 1949, to the date of abandonment, with interest as herein provided, less any benefits received under the Plan, or if the employee shall have retired, the amount shall be equal to his contributions from June 1, 1949, to the date of his retirement, with such interest, less the retirement allowance or disability payments that have already been made to him.

(b) After the allocations provided for in subparagraph (a) above, the balance remaining in the Fund shall be used for the purpose of providing for the retirement and disability benefits under this Plan (reduced as hereinafter stated) for active employees who have on the

date of abandonment reached age sixty-five (65), and for those who retired or were disabled (and are still receiving a benefit) after May 31, 1948; such benefits shall be reduced, in the case of each employe, by a percentage equal to the percentage which the contributions of such employe, since June 1, 1949, bears to the total contributions made since said date (by him and the Authority) with respect to his compensation.

(c) In the event such balance in the Fund is insufficient to provide for such reduced retirement and disability payments, then such balance shall be allocated to the account of each such employe in proportion to the ratio which the actuarial reserve for his said reduced benefit (to commence at normal retirement date) bears to the total of such actuarial reserves for all such employes.

(d) In the event there remains a balance in the Fund after the allocations provided for in subparagraph (a) and after carrying out the provisions of subparagraph (b) above, then such balance shall be allocated to the account of each employe not provided for in subparagraphs (b) and (c) of this section in proportion to the ratio which the actuarial reserve for his accrued retirement allowance (reduced by the same formula prescribed in (b) above) to commence at normal retirement date, bears to the total of such actuarial reserves for all such employes.

21.2. The Trustee shall liquidate the Fund, and the amounts allocated in accordance with paragraph 21.1(2) shall be apportioned to all such employes in cash or in the form of insured paid up annuities, or by transfer to another trust fund, or otherwise—all as the Committee may direct.

21.3. Not currently applicable. Text of original paragraph available in the Committees Files.

21.4(1) The provisions of this Section shall apply only to those benefits provided under the Plan by the Authority's contributions to or on account of the twenty-five highest paid employes of the Authority on January 1, 1965 who were participating employes in the Plan at that time or later become participating employes and whose annual benefit provided by the Authority's contributions would exceed Fifteen Hundred Dollars (\$1,500), in the event that the Plan either is terminated or the full current costs thereof are not met within the ten-year period commencing January 1, 1965.

This Section shall be of no effect if, prior to any of such events, these conditions and limitations are no longer necessary in order for the Plan to meet the requirements of Section 401(a) of the Internal Revenue Code of 1954, or any substitute therefor then in effect.

The provisions of this Section shall not restrict :

(i) Full payment of any insurance, death or survivor's benefits on behalf of a participating employe who dies while the Plan is in full effect and its full current costs for the period commencing January 1, 1965 have been met.

(ii) The current payment of full annual retirement benefits as called for in the Plan for any retired participating employes while the Plan is in full effect and its full current costs for the period commencing January 1, 1965 have been met.

(iii) Payment of any benefits provided by a participating employe's own contributions.

(iv) Payment of any benefits on or after the later of January 1, 1975 or the date when the full current costs of the Plan are first met.

(2) Notwithstanding any other provision of the Plan to the contrary, the value of benefits from the contributions of the Authority—including funds attributable thereto—to or on account of any retired employe hereunder to whom the provisions of this Section 21.4 are applicable shall not exceed an amount equal to the largest of:

(a) The contributions of the Authority—including funds attributable thereto—which would have been applied to provide the benefits of each employe if the Plan as in effect on December 31, 1964 had been continued in effect without change; or

(b) \$20,000; or

(c) The Sum of:

(i) the contributions of the Authority—including funds attributable thereto—which would have been applied to provide the monthly pension of each employe under the Plan as in effect on December 31, 1964, if the Plan had been terminated on such date; and

(ii) an amount equal to twenty per cent (20%) of the first Fifty Thousand Dollars (\$50,000) of the participating employe's annual average compensation multiplied by the number of years elapsed since January 1, 1965 for which the current costs of the Plan have been met.

(3) Any reapportionment of benefits required because of these restrictions shall be credited to the remaining participating employes, retired participating employes and their beneficiaries in the ratio that the reserve liability then attributable to such person bears to the total reserve liability for all such persons under this Plan (Amended effective 1-1-65)

#### SECTION 22—SUPPLEMENTAL BENEFITS AND CONTRIBUTIONS

Not currently applicable except as to certain retired employes. Text of original section available in the Committee's Files.

#### SECTION 23—AMENDMENT, EXTENSION AND TERMINATION OF AGREEMENT

23.1. This agreement as amended, which has been in effect from June 1, 1949, to date, has been further amended effective January 1, 1971, and shall continue in effect as so amended thru December 31, 1973. Thereafter it shall automatically continue for successive periods of three years each after December 31, 1973, with contributions from the Authority and the employes fixed at the rates and for the periods specified in Paragraph 7.1 hereof as amended January 1, 1971. (Amended 1-1-71)

23.2. Either party may propose amendments by giving notice in writing thereof to the other party not more than ninety (90) days and not less than sixty (60) days prior to December 31, 1973, or prior to the end of any three year period thereafter during which the agreement is automatically continued. In the event no agreement is reached on such proposed amendments submitted under this paragraph, the matters of disagreement shall be submitted for determination by a

Board of Arbitration which shall consist of three persons, one appointed by the Authority, one appointed by the Association, and the other selected by the two so appointed. The decision of the majority of the Board of Arbitration upon the issues submitted shall be binding upon the parties. (Amended 1-1-71)

23.3. Unless and until proposed amendments have been agreed upon or determined by decision of a Board of Arbitration, the terms of this agreement and the obligations of the parties thereunder shall continue in effect.

#### SECTION 24—SEPARABILITY PROVISION

24.1. If any provision of this agreement be held invalid, the remainder of the agreement shall not in any way be affected or impaired thereby.

#### APPENDIX A

Pursuant to paragraph 4.2 of the Plan, the Plan as amended, has been extended by separate agreements between the Authority and the bargaining agents to employes represented by the following bargaining agents: The applicable rates of past service compensation for such employes is also listed below:

The International Brotherhood of Blaksmith, Drop Forgers & Helpers:	
Hammersmith, tool fire blacksmith, blacksmith, electrical and acetylene welder, hammersmith helper, tool fire helper, blacksmith's helper and helpers-----	\$3, 683.00
The Carpenters' District Council:	
Pattennmaker -----	3, 743.00
Class "A" Carpenter-----	3, 579.00
Class "B" Carpenter-----	3, 345.00
Carpenter Apprentice-----	2, 445.00
The International Brotherhood of Electrical Workers, Local 713:	
Class A:	
Wiremen, electrical maintenance man, armature winder-----	3, 787.00
Class B:	
Armature winder, Class "B" worker, Class "B" special, yard and electric crane operators-----	3, 577.00
Apprentice -----	2, 891.00
Automobile, Car and Equipment Painters, Local No. 396:	
Letterer and striper, painter and finisher—Class "A"-----	3, 563.00
Painter and finisher—Class "B"-----	3, 250.00
Painters' helper-----	2, 761.00
The International Association of Sheet Metal Workers, Local No. 115:	
Tinners and tinner's helper-----	3, 296.00
The International Brotherhood of Electrical Workers, Local Union B-134: "B" maintainers-----	3, 929.00
The International Brotherhood of Electrical Workers Local No. 9:	
Rapid Transit Division:	
(a) Linemen -----	4, 041.00
(b) Line helpers and third rail men-----	3, 373.00
(c) Signal maintainers and relay repairmen-----	4, 482.00
(d) Gate repairmen and signal maintainer helpers-----	3, 742.00
Surface Division:	
(a) General Foremen-----	5, 581.00
(b) Line foremen, cable foremen, and conduit foremen-----	4, 657.00
(c) Emergency linemen and linemen-----	4, 143.00
(d) Emergency lineman's helpers and lineman's helpers-----	3, 388.00
(e) Conduit man and laborer-----	2, 887.00

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local No. 739:	
(a) Supervisory chauffeurs, wreck truck chauffeurs, tractor trailer chauffeurs, emergency line truck chauffeurs, construction line truck chauffeurs, and official passenger chauffeurs-----	4,117.00
(b) Service truck chauffeurs, wreck truck helpers, and service truck helpers-----	3,986.00
Upholsters' and Furniture Workers, Local No. 18: Class "A" and "B" upholsters-----	3,614.00
International Union of Operating Engineers, Local No. 399: Stationary engineer-----	3,775.00
Pipe Fitter's Association, Local No. 597: Steamfitter and pipefitter-----	3,702.00
International Association of Machinists, District No. 8:	
(a) Toolmakers-----	3,956.00
(b) Machinists-----	3,709.00
(c) Motor rebuilders, beltmen, truckmen, apprentices, and specialists-----	3,037.00
International Printing Pressmen and Assistants' Union of North America:	
Meisel Pressman-----	3,783.00
Pressman, compositor and cutter-----	3,443.00
Assistant pressman-----	3,081.00
Gordon feeder-----	2,576.00
Stitcher and wrapper-----	2,314.00
Transport Workers Union of America, Local 236, C.I.O.:	
Class I welder operator and section foreman-----	3,780.00
Class II Foreman, assistant foreman, compressor operator, loader—mixer operator, grinder operator, switch repairman, assistant yard foreman, paver, and bonder-----	3,540.00
Class III emergency man, switch repairman helper, thermit welder helper, electric welder helper, grinder helper, laborers, and watchman-----	3,180.00

The plan has also been extended to employees not represented by any bargaining agent and covers those employees who have accepted or otherwise acquiesced in the plan.

#### APPENDIX B

By agreement dated April 30, 1953, between the Authority and Division 1381 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, the Plan was extended to participants in the Retirement Plan of Chicago Motor Coach Company represented by Division 1381 with the following modifications as provided in the Agreement of April 30, 1953.

For Chicago Motor Coach Company Employes who were members of Division 1381 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employers of America, on January 1, 1953, the following modifications to the Plan will apply:

1. The Retirement Plan for Chicago Transit Authority Employes, hereafter called the Authority Plan, shall be applicable from and after January 1, 1953.
2. All provisions of the Authority Plan shall apply except as modified hereunder.
3. "Past Service" shall mean continuous service with the Chicago Motor Coach Company, or its predecessors, prior to January 1, 1951.
4. "Future Service" shall mean continuous service with the Chicago Motor Coach Company or the Authority from and after January 1, 1951.

5. "Annual Rate of Past Service Compensation" shall mean:  
As to each hourly rated employe the following amounts:

Bus operators	\$3,700.00
Bus mechanics, bus mechanics' helpers	3,480.00
All other hourly paid employes	2,940.00

As to each salaried employe "annual rate of past service compensation" shall mean the amount established by Paragraph 3.8<sup>1</sup> of the Motor Coach Plan.

6. All retirement or disability allowances payable under the Motor Coach Plan to employes retired prior to January 1, 1953, shall become a liability of the Fund established under the Authority Plan and paid from such Fund, and, except for the liability contained in Section 19.1 (1)<sup>2</sup> of the Motor Coach Plan, there shall be no liability with respect to such retired employes other than as provided in the Authority Plan.

7. Refunds from employes' contributions on separation from service shall include refunds of said contributions made under the Motor Coach Plan

#### APPENDIX C

Chicago Motor Coach Company Employes who were participants of the Chicago Motor Coach Company Non-union Employes' Trust on January 1, 1953, or retired thereunder on January 1, 1953, and who have accepted the Plan are covered by the Plan subject to the following modifications:

1. "Past Service" shall mean the continuous service with the Chicago Motor Coach Company or any of its predecessor public utilities, rendered prior to January 1, 1952.

2. "Annual Rate of Past Service Compensation"—to be based on the total earnings paid by the Chicago Motor Coach Company to each of the employes who were participants under the Chicago Motor Coach Company Non-union Employes' Pension Trust during the period beginning June 1, 1948, and ending May 31, 1949.

3. "Past Service Credit"—One per cent of his annual rate of past service compensation as defined in the above paragraph, for each year of continuous service from the date of original employment to January 1, 1952.

##### <sup>1</sup>3.8. "Annual Rate of Past Service Compensation" shall mean:

As to each salaried employe, the total earnings paid by the Company to such employe for the year June 1, 1948 to May 31, 1949. If the services of such employe did not cover the entire year June 1, 1948 to May 31, 1949, the "annual rate of past service compensation" shall be determined by multiplying by twelve the average monthly earnings of said employe paid by the Company in the period between June 1, 1948 to May 31, 1949, but not less than twelve times the monthly job classification rate on May 31, 1949 of such employe. If such employe did not work during the year June 1, 1948 to May 31, 1949, the "annual rate of past service compensation" shall be the monthly rate on May 31, 1949 of the job such employe held when his absence began multiplied by twelve. As to each salaried employe hired after May 31, 1949, the "annual rate of past service compensation" shall be the monthly job classification rate on May 31, 1949 of the job for which the employe was hired multiplied by twelve.

As to an employe absent on account of a position with the Association or its International Office "annual rate of past service compensation" shall be determined in accordance with this paragraph on the basis of the job classification last held with the Company by such employe.

##### Section 19—Distribution of Funds in Event of Abandonment of Plan

<sup>2</sup>19.1. While it is the intent of the parties hereto to maintain an old-age retirement and disability allowance plan permanently, however, in the event the Plan is abandoned in the future, the following provisions shall control.

(1) The Company agrees to pay (from and after the date of such abandonment) to each employe retired or disabled prior to June 1, 1949 the monthly benefits for life or for the duration of the disability, as the case may be, to which he is entitled at and immediately prior to the date of such abandonment.

4. "Future Service" shall mean continuous service with the Chicago Motor Coach Company and the Chicago Transit Authority from and after January 1, 1952.

5. "Future Service Credit"—One and one-half per cent of the employee's compensation as defined in paragraph 3.9 of the CTA Retirement Plan, for continuous service from and after January 1, 1952.

6. "Contributions to the Fund"—Effective January 1, 1953, contributions of the Authority and of the employes shall be in accordance with Paragraph 7.1 of the CTA Retirement Plan.

#### APPENDIX D

#### *Rules Adopted by the Retirement Allowance Committee Applying to Participants in the Plan*

##### RULE NO. 1

The date on which an employe shall be considered disabled under Section 12, paragraph 12.1 shall be as follows:

(1) The date a disabled employe shall be considered totally and permanently disabled for any type of work shall be that date on which the Committee's doctor certifies that such employe is totally and permanently disabled for any type of work.

(2) The date the Committee's doctor certifies that an employe is unable to return to his regular duties after receiving benefits for a particular disability for twenty-six weeks under the Authority's Group Accident and Sickness Insurance, or from the Authority under the Workmen's Compensation Act, shall be the date governing disability under Section 12, paragraph 12.1.

##### RULE NO. 2

No vacation money received after employe's sixty-fifth (65th) birthday shall be used in the formula determining the actual Pension to be paid, nor shall there be any contribution deducted on such vacation pay.

##### RULE NO. 3

Any change in an employe's date of birth which has been accepted as official by the Insurance Department shall govern such employe's contribution to the Pension Plan, and contributions shall stop on the employe's sixty-fifth (65th) birthday.

The Payroll Department shall make all necessary returns of contributions or retroactive deductions, as the case may be, where the Insurance Department officially accepts the change in the date of birth of an employe.

##### RULE NO. 4

Applications for retirement or disability retirement initiated by the employe shall be in the Secretary's office on or before the fourteenth (14th) of the month preceding the first of the month in which the employe desires to retire. The Committee authorizes the Secretary or the Chairman to make an exception to this Rule in those cases where the employe is required to retire by the Authority or in which the facts surrounding the individual case would warrant making an exception.

## RULE NO. 5

The payment of disability allowance due an employe who has worked during part of a month for which he is also due disability allowance shall be made on a pro rata base and shall be computed as follows:

The monthly disability allowance shall be broken down to a daily basis by dividing the number of days in the month into the amount of monthly payment. The figure obtained by this division shall be multiplied by the number of days for which a disability allowance is due. The product of this multiplication shall be the amount of disability allowance paid for the month.

## RULE NO. 6

Defines average amount invested. Text of rule in Committees Files.

## RULE NO. 7

Retirement under the Retirement Plan for Chicago Transit Authority Employees shall be effective on the date officially accepted by the Retirement Allowance Committee and recorded in the official minutes of the retirement meetings. If a retired employe (other than disability retirement) shall work for the Chicago Transit Authority after the effective date of his retirement, he will forfeit any monthly retirement allowance that may be due him for the calendar month in which such work was performed.

This Rule shall not be construed as in any way granting the right for a retired employe to return to work for the Chicago Transit Authority subsequent to the effective date of his retirement.

The pronoun "his" as used in this Rule shall refer both to masculine and feminine employes of the Chicago Transit Authority.

## RULE NO. 8

Provides for the determining of Net Income under Section 15 paragraph 15.6. Text of rule in Committees Files.

## RULE NO. 9

A laid-off or furloughed employe shall be considered to be eligible to participate in the Plan, provided the employe returns to full duty before the expiration of three (3) years from the date such lay-off or furlough started, unless the employe resigns in writing from Chicago Transit Authority employment.

## RULE NO. 10

Although it is intended to pay refunds due employes or beneficiaries as soon as possible after the refund is due, the Committee may withhold payment of any or all refunds for a period of one hundred twenty (120) days after a refund is due.

## RULE NO. 11

The "one year of service with the Authority", as used in the first sentence of paragraph 15.2 of Section 15, shall be determined by taking the period of time from his date of employment up to and including his last day actually at work.

## RULE NO. 12

Not currently applicable except as to certain retired employes. Text of original section available in the Committees Files.

## RULE NO. 13

Not currently applicable except as to certain retired employees. Text of original section available in the Committees Files.

## RULE NO. 14

The phrase, "current average pay hours" appearing in the third line of the second paragraph of paragraph 3.9 means the normal work day, work week, or work month, currently in effect, plus 5% to represent average overtime and other pay credits.

## RULE NO. 15

Unless an employe files a protest concerning any part of his Application for Retirement at the time he executes his Application for Retirement, there shall be no later recourse to correct any data thereon, unless it can be proven a clerical error has been made.

## RULE NO. 16

An employe entering service within the terms of Paragraph 3.7 (2) shall receive no refund of his contributions to the Plan unless the Committee approves his written request for a refund. The request shall state the reason he desires a refund and shall be submitted to the Secretary of the Committee. If the request is approved, the employee shall, at the time of receiving the refund, sign a written statement substantially in the following form:

To the Retirement Allowance Committee of the Retirement Plan for Chicago Transit Authority Employes:

I acknowledge receipt of the refund of my contributions to the Retirement Plan. I agree that if I return to the active service of the Authority within the terms of Paragraph 3.7(2), I will, prior to commencing work, remit the amount of this refund to the Authority for payment into the Plan Fund. I understand that if I do not so remit the amount of the refund before commencing work, I shall lose all rights I may have in the Plan except those rights which accrue to any new employe.

-----  
*Employe's signature*

## RULE NO. 17

The "90 days of service with the Authority" as used in Section 15, Paragraph 15.2(b), shall be determined by taking the period of time from his date of employment up to and including his last day actually at work.

## RULE NO. 18 (12-20-71)

When a request for an optional form of payment is filed with the Retirement Allowance Committee at less than the six month waiting period prior to the effective date of retirement, as provided in Paragraph 13.2 of the Plan the employee shall be required to submit, pursuant to Paragraph 13.2, evidence of good health with his option application.

This requirement may be satisfied by a detailed medical report from the employee's attending physician, unless at the discretion of the Secretary of the Retirement Allowance Committee, a physical examination and report by the Committee's doctor is ordered.

## RULE NO. 19 (2-1-73)

Section 3, Paragraph 3.7(6) provides that an employee's service will remain unbroken during a layoff not to exceed three (3) years. An employee who is eligible for retirement under the appropriate sections of the Plan on the effective date of his layoff, may at his option make application for such retirement during the first three (3) years of the layoff. Benefits will be computed, based on the age and service credit as provided for in the Plan on the effective date of his retirement. In the event the employee does not return to active duty and fails to apply for retirement during the three (3) year period, his contributions will be refunded and his service terminated under the Plan.

## RULE NO. 20 (3-19-73)

"Temporary Employee" as referred to in Section 3, Paragraph 3.3 (3) shall be defined as follows:

A Temporary Employee is a person employed by the Chicago Transit Authority for a period not to exceed six months (unless period of employment is extended by the Authority) and who does not accumulate seniority during his employment period, and who is not eligible for Group Insurance, Vacation Allowance or Retirement Allowance.

#### APPENDIX B—THE PENSION PLAN OF THE VILLAGE OF MORTON GROVE, ILL.

Application is hereby made to Continental Assurance Co., Chicago, Ill. (herein called the company), for a group annuity deposit administration contract to provide pension benefits for the eligible employees of the village of Morton Grove; address: 6300 Lincoln Avenue, Morton Grove, Ill.

##### I. ELIGIBILITY REQUIREMENTS

Each present and future full-time Employee who meets the eligibility requirements set forth in the Contract shall be eligible to become a participant under the Contract.

## II. SCHEDULE OF BENEFITS

Each participant shall be entitled to such benefits as may become due him in accordance with the Schedule contained in the Contract.

## III. PAYMENT OF DEPOSITS

On the basis of and in the manner set forth in the Contract, the Employer shall make deposits to a fund to be held by the Company and applied in accordance with the terms set forth in the Contract.

## IV. EFFECTIVE DATE

The Contract shall become effective at 12:01 a.m. Standard Time at the Employer's address on January 1, 1966, provided that this application shall have been accepted by the Company and the initial deposit shall have been made.

Dated at Morton Grove this 10th day of December, 1965.

## PART I—DEFINITIONS, BENEFITS, AND OPTIONS

### 1. DEFINITIONS

A. Anniversary Date—The Effective Date of this Contract or any anniversary thereof.

B. Contract Year—The period of twelve months commencing on any Anniversary Date.

C. Employer—The Village of Morton Grove, also referred to herein as Owner.

D. Participant—Each Employee who fulfills the eligibility requirements set forth in Section 2 of this Part I.

E. Full-time Employee—An Employee who is employed by the Employer for at least 400 hours per year.

F. Employee Contributions—Each Participant shall be required to contribute 2% of his Monthly Earnings.

G. Monthly Earnings—The term "Monthly Earnings" as used herein with respect to a Participant shall mean, as of any Anniversary Date, such Participant's regular rate of compensation from the Employer at that date expressed in dollars per month and excluding commissions, bonuses, overtime, and other non-recurring forms of compensation; provided, however, that if the Anniversary Date shall be one falling less than 5 years prior to the Participant's Effective Annuity Date, the term shall mean an average of the Participant's regular rates on the fifth through the first Anniversary Date prior to his Effective Annuity Date, assuming for this purpose that his current rate will continue unchanged.

H. Credited Service—A Participant's completed years of continuous service with the Employer from January 1, 1960 or his date of employment, if later, to his Effective Annuity Date or date of termination; provided, however, that a fraction of at least 6 months shall be deemed to be a completed year.

I. Fund—The Group Annuity Fund as defined in Section 12 of Part II of this Contract.

J. Effective Annuity Date—The date annuity payments are to commence for any Participant, in accordance with his Normal, Early, Postponed, or Disability Retirement Date.

K. Normal Annuity—

(i) A monthly retirement annuity commencing on a Participant's Effective Annuity Date with the proviso that on the first of the month following the Participant's date of death the installments will be reduced by 50% and continued to a designated Contingent Annuitant and cease with the last payment preceding the date of the Contingent Annuitant's death. This annuity form shall not be operative should there be no Contingent Annuitant or should the designated Contingent Annuitant predecease the Participant. In such event a Participant's Normal Annuity shall be provided under (ii) below. This annuity form will be purchased under Table IA or IB of Part III of this contract.

(ii) A monthly retirement annuity commencing on a Participant's Effective Annuity Date and ceasing with the last payment preceding the date of the Participant's death; provided, however, that in the event of death, the excess, if any, of the Participant's accumulated contributions over the sum of the payments paid shall be payable to his Beneficiary hereunder in a single sum. This annuity form shall be purchased under Table 1C or 1D of Part III of this contract.

L. Conditions and Restrictions Relating to the Contingent Annuitant—Satisfactory proof of the age of the Participant's Contingent Annuitant shall be furnished to the Company no later than the Participant's Effective Annuity Date.

If the Participant should die before his Effective Annuity Date, the Contingent Annuitant shall not be entitled to receive any annuity payments. The designation of any person as Contingent Annuitant shall not constitute such person a beneficiary with respect to any other benefit provided in this Contract.

M. Normal Retirement Date—The first day of the month coinciding with or next following the Participant's 65th birthday or after 10 years under this contract, if later, but in no event later than the first day of the month coinciding with or next following the Participant's 70th birthday.

N. Early Retirement Date—The first day of any month prior to a Participant's Normal Retirement Date, provided he has completed at least 10 years of continuous service with the Employer and is within 10 years of his Normal Retirement Date.

O. Postponed Retirement Date—Subject to the consent of the Employer, the first day of any month after a Participant's Normal Retirement Date, subject to a maximum of 5 years.

P. Disability Retirement Date—The date a Participant's disability occurs.

Q. Beneficiary—The person or persons designated by a Participant to be the recipient of any benefit payable under this Contract upon the death of the Participant, in accordance with Section 6 of this Part I.

R. Contingent Annuitant—The spouse of a Participant, provided, however, that such Contingent Annuitant must have been married to the Participant for at least one year prior to the Participant's Effective Annuity Date.

## 2. ELIGIBILITY REQUIREMENTS

Each present Full-time Employee of the Employer shall be eligible to participate under this Contract on the Effective Date.

Each future Full-time Employee of the Employer shall be eligible to participate under this Contract on the Anniversary Date coinciding with or next following his completion of one year of service, provided he was not over age 60 on his date of employment.

## 3. RETIREMENT BENEFITS

A. Normal Retirement Benefit—Each Participant shall be entitled to receive a Normal Annuity, commencing on his Normal Retirement Date, equal to the sum of:

(1) 1% of the first \$400 of his Monthly Earnings, multiplied by his years of Credited Service, plus

(2)  $1\frac{2}{3}\%$  of his Monthly Earnings in excess of \$400, multiplied by his years of Credited Service.

The amount of such Participant's Normal Annuity provided by (2) above shall be reduced by  $\frac{1}{15}$  for each year of service less than 15 that such Participant will have completed at his Normal Retirement Date.

B. Early Retirement Benefit—A Participant electing to retire early shall be entitled to a Normal Annuity, commencing on his Early Retirement Date, as determined under Part A of this Section 3, but based upon actual years of Credited Service and reduced by .5% for each month by which his Early Retirement Date precedes his Normal Retirement Date.

C. Postponed Retirement Benefit—A Participant electing to postpone his retirement beyond his Normal Retirement Date shall be entitled to a Normal Annuity, commencing on his Postponed Retirement Date, equal to that purchasable by the amount which would have been used to purchase his Normal Annuity on his Normal Retirement Date accumulated at 3% per annum until his Postponed Retirement Date.

D. Disability Retirement Benefit—Each Participant who retires because of disability shall receive a Normal Annuity, commencing on his Normal Retirement Date, determined as in Part A of this Section 3 using his actual years of Credited Service.

For any Participant who retires because of disability, if the total of monthly disability benefits (as certified to the Company by the Employer) payable under the terms of the Social Security Act and under any Long Term Disability Policy issued to the Employer by Continental Casualty Company, is less than 50% of the Participant's Monthly Earnings, then a temporary life only annuity shall be payable hereunder to such Participant commencing on the Participant's Disability Retirement Date and ceasing with the Participant's death, or, if sooner, his Normal Retirement Date. The amount of this temporary life only annuity shall be equal to the difference between the total of the Participant's disability benefits described above and 50% of his Monthly Earnings.

## 4. DEATH BENEFIT

Upon receipt of due proof that the death of a Participant occurred during the continuance of this Contract and prior to his Effective

Annuity Date, the Company will pay his beneficiary, as a death benefit, an amount equal to the sum of his contributions accumulated at 3% per annum.

#### 5. BENEFITS ON TERMINATION

In the event of the termination of employment of a Participant for reasons other than death or disability, and prior to retirement, such Employee shall be eligible to receive his contributions accumulated at 3% per annum.

#### 6. BENEFICIARY DESIGNATION

Each Participant for whom a death benefit may become payable hereunder will designate a Beneficiary by filing with the Employer a written designation of beneficiary, and may designate a new Beneficiary at any time by filing with the Employer written request for such change. Such change shall not take effect until received by the Company at its home office. Upon receipt thereof such change shall, except as provided below, relate back and take effect as of the date such Participant signed the request, whether or not he is living on the date of such receipt.

Upon receipt of due proof of the death of a Participant covered hereunder, payment in full by the Company of the death benefit to the Beneficiary whose proper designation by the Participant was last received prior to the date of payment shall relieve the Company of all liability under this Contract with respect to that Participant.

Should the last designated Beneficiary not survive the Participant, or should no Beneficiary have been named, the net sum due on the death of such Participant shall be paid, at the option of the Company, to the estate of the Participant or to any one or more of the following surviving relatives: wife, husband, mother, father, child or children, brothers or sisters.

#### 7. OPTIONAL RETIREMENT BENEFITS

In lieu of a Normal Annuity, a Participant may elect to receive his retirement benefit in one of the following forms:

A. Five Years Certain and Life Thereafter Annuity—a monthly annuity commencing on the Participant's Effective Annuity Date, provided he is living, and payable for 5 years certain and life thereafter subject to the following conditions and restrictions:

(1) Election must be made and filed at the Company's home office at least 2 years prior to the Participant's Effective Annuity Date or within 90 days of the execution date of this contract.

(2) If the election of the 5 Years Certain and Life Annuity should result in monthly payments to any person of less than \$10.00, such election shall not become operative except upon the specific, written consent of the Company.

(3) The Participant shall name a beneficiary to receive any death benefit payable under this option.

(4) The form of the annuity may be changed, without the consent of the Company, if the request for such change is filed at least 2 years prior to the Participant's Effective Annuity Date.

In the event a Participant should die after retirement but prior to the payment of 60 monthly installments, the balance of such install-

ments shall be discounted at the rate of interest on the reserve thereof and paid to his beneficiary in a single sum. The payments that will be paid under this option shall be as purchasable under the rates in Part III of this contract by a single premium equal to the single premium for such Participant's Normal Annuity.

B. Ten Years Certain and Life Thereafter Annuity—a monthly annuity commencing on the Participant's Effective Annuity Date, provided he is living, and payable for 10 years certain and life thereafter subject to the following conditions and restrictions:

(1) Election must be made and filed at the Company's home office at least 2 years prior to the Participant's Effective Annuity Date or within 90 days of the execution date of this contract.

(2) If the election of the 10 Years Certain and Life Annuity should result in monthly payments to any person of less than \$10.00, such election shall not become operative except upon the specific, written consent of the Company.

(3) The Participant shall name a beneficiary to receive any death benefit payable under this option.

(4) The form of the annuity may be changed, without the consent of the Company, if the request for such change is filed at least 2 years prior to the Participant's Effective Annuity Date.

In the event a Participant should die after retirement but prior to the payment of 120 monthly installments, the balance of such installments shall be discounted at the rate of interest on the reserve thereof and paid to his beneficiary in a single sum. The payments that will be paid under this option shall be as purchasable under the rates in Part III of this contract by a single premium equal to the single premium for such Participant's Normal Annuity.

C. Life Only Annuity—a monthly annuity commencing on the Participant's Effective Annuity Date and ceasing with the last payment preceding the date of the Participant's death subject to the following conditions and restrictions:

(1) Election must be made and filed at the Company's home office at least 2 years prior to the Participant's Effective Annuity Date or within 90 days of the execution of this Contract.

(2) If the election of the Life Only Annuity should result in monthly payments to any person of less than \$10.00 such election shall not become operative except upon the specific, written consent of the Company.

(3) The form of the annuity may be changed, without the consent of the Company, if the request for such change is filed at least 2 years prior to the Participant's Effective Annuity Date.

The payments that will be paid under this option shall be as purchasable under the rates in Part III of this contract by a single premium equal to the single premium for such Participant's Normal Annuity.

D. Cash Settlement—Payment of the reserve of the Normal Annuity in a single sum.

(1) Election must be made and filed at the Company's home office at least 2 years prior to the Participant's Effective Annuity Date or within 90 days of the execution of this contract.

(2) The form of the benefit may be changed, without the consent of the Company, if the request for such change is filed at least 2 years prior to the Participant's Effective Annuity Date.

## PART II—GENERAL PROVISIONS AND ADMINISTRATION OF CONTRACT

## 1. PARTICIPATING:

This contract, while in force, shall participate in the divisible surplus of the participating group annuity business of the Company as annually ascertained and apportioned. Any share of the surplus thus ascertained and apportioned shall be credited to the Fund and considered as being applied in payment of part of the deposit due during the taxable year of the Owner when credited or within the next succeeding taxable year.

## 2. ASSIGNMENT OF BENEFITS:

Except so far as may be contrary to the laws of any state having jurisdiction in the premises, a Participant or beneficiary hereunder shall have no right to assign, transfer, hypothecate, encumber, commute or anticipate his interest in this contract or in or to any benefit or payments hereunder. Such interest, benefits and payments shall not in any way be subject to any legal process to levy upon or attach the same for payment of any claim against any Participant or beneficiary.

## 3. RESERVES:

The reserves on this contract for annuities purchased shall be at least equal to the 1951 Group Annuity Table projected; with the interest at the rate of 3½% per annum.

## 4. MODIFICATIONS:

No agent of the Company shall execute, amend or modify this contract or extend the time for payment of Owner deposits. This contract cannot be modified or amended nor its provisions waived or extended in any respect except with the written consent of the Company, in compliance with the law of the state in which this contract is issued. Such written consent must be signed by the President, a Vice President, the Secretary or an Assistant Secretary of the Company, whose authority will not be delegated.

With the written consent of the Company, the Owner may, at any time and from time to time, modify or amend this contract in any respect without the consent of any Participant provided that no such modification or amendment shall deprive any Participant of any right to benefits accrued under this contract as of the effective date of such modification or amendment, except as may be required to secure approval of this contract by the Commissioner of Internal Revenue.

## 5. ENTIRE CONTRACT:

This contract and the application of the Owner, a copy of which is attached hereto, shall constitute the entire contract between the parties.

## 6. REVISION OF RATES:

The Company reserves the right to revise the purchase rates contained herein from time to time, or to change the interest rates set

forth in or used as a basis of any tables contained herein except that no change or revisions shall be made in such rates, applicable to deposits made during the first 5 years of this contract.

Except in the case of a revision or change applicable upon resumption of deposits by the Owner following temporary suspension of deposit, written notice of the changes or revisions shall be given to the Owner at least 31 days before they are to become effective.

#### 7. PROOF OF AGE:

Notwithstanding the other provisions of this contract, no annuity shall be paid unless and until proof of date of birth for the Participant has been submitted to and accepted by the Company.

#### 8. MISSTATEMENT OF AGE:

If the age of a Participant is incorrectly stated, the amount of annuity purchasable hereunder shall be the amount of annuity determined by this contract but adjustments shall be made so that the Company shall receive from the Fund the actual premium called for at the true age of the Participant.

#### 9. CERTIFICATES:

All Participants, for whom annuities are purchased hereunder, will be issued individual certificates by the Company describing the benefits to which they are entitled. These certificates shall be delivered to the Owner for distribution to the Participants.

#### 10. REGISTRY OF PARTICIPANTS:

The Owner shall furnish the Company with the names and other data necessary for the administration of this contract for all Participants included hereunder and shall notify the Company as of each Anniversary Date of all unreported changes and terminations.

#### 11. DEPOSITS BY OWNER:

The Company shall compute at each Anniversary Date, on such actuarial basis as shall be mutually acceptable by the Owner and the Company, the annual deposit estimated to be required to keep the Plan actuarially solvent through the Contract Year then beginning. Such deposit, referred to elsewhere as the "full current cost", shall consist of the current service cost plus interest on any unfunded past service liability on such Anniversary Date, determined under the regulations of the Commissioner of Internal Revenue. Such deposit will be payable normally in one sum within thirty-one days of the Anniversary Date, but other payment schedules within the Contract Year may be elected by the Owner on due notice to the Company.

If, at any time, annuities are to be purchased under the provisions of this contract and the amount required for such purpose exceeds the amount in the Fund, then an additional deposit in the amount of such excess shall be immediately due and payable by the Owner. No benefits shall be purchasable hereunder until such additional deposit

shall have been made or until the manner of purchase has been modified by an agreement between the Owner and Company after which time annuities shall be purchased in the order in which they became due.

**12. GROUP ANNUITY FUND:**

A Group Annuity Fund will be established from the Owner's deposits made hereunder. On each Anniversary Date interest shall be credited to the Fund, such interest being determined on the amount held in the Fund from time to time during the Contract Year then ending. The rate of interest to be applied during the first five Contract Years shall be not less than 4% per annum. Thereafter, the rate of interest to be applied on funds deposited during the first five Contract Years shall not be less than 3½% per annum, until such deposits are used to provide the benefits herein. The rate of interest to be guaranteed with respect to funds deposited after the first five Contract Years shall be as then announced by the Company. Withdrawals shall be considered to be made from the Fund in the same order in which such deposits were made.

The Company shall be entitled to withdraw from the Fund as of the end of each Contract Year, as its contract charge hereunder, \$465.00 reduced by 1% of the deposits in excess of \$15,000 made hereunder during such Contract Year. In addition, the Company shall be entitled to charge against interest earnings on the Fund such reasonable actuarial, field, and administrative expenses as it incurs herewith which are in excess of the aforesaid contract charge, however, in no event shall such excess expenses be of such size as to result in a net rate of interest accumulation less than that guaranteed.

**13. PURCHASE OF ANNUITIES:**

As of a Participant's Effective Annuity Date, a sum shall be withdrawn from the Fund and shall be applied to purchase the amount of annuity to which such Participant is entitled under the provisions of Part I of this Contract. Premiums for such annuity shall be determined under the applicable Table of Rates in Part III of this Contract, in accordance with the Participant's sex and attained age, nearest birthday.

**14. PAYMENT IN A SINGLE SUM:**

If the total amount of any Participant's annuity is less than \$10.00 per month, the Company reserves the right to pay the Participant the reserve of such annuity payments in a single sum.

**15. TEMPORARY SUSPENSION OF DEPOSITS:**

The Owner may temporarily suspend making deposits hereunder on any Anniversary Date if written notice of such suspension is received by the Company prior to such date. Such Temporary Suspension of Deposits may continue for any period not to exceed three years. The Owner shall have the right to resume the making of deposits hereunder at any time during or at the end of such period. During such period this Contract shall not be deemed terminated.

## 16. TERMINATION OF CONTRACT:

This contract shall terminate upon any termination of deposits, or on any failure of the Owner to meet the full current cost as provided in the Section, "Deposits by Owner", except as provided in Section 15 hereof. In the case of Temporary Suspension of Deposits under Section 15, this contract shall terminate in the event payments of deposits are not resumed at the end of such period. No grace period shall be allowed for the resumption of deposits at the end of temporary suspension of deposits.

The Company shall have the right to terminate this contract if the Owner should, at any time cause to be paid or purchased, other than as provided in this contract, any annuity payable hereunder to any Participant.

In the event of termination of this contract, no Participant shall thereafter become eligible hereunder. The Company shall proceed with disbursement of the Fund in accordance with option (a) or (b) below, whichever is selected by the Owner.

(a) Purchase of Annuities—The Company shall proceed with respect to the Fund by purchasing either immediate or deferred annuities, to the extent that the balance therein is sufficient therefor, in the following manner and order of precedence:

(i) by purchasing, in the manner provided by Section 13 of this Part II, all unpurchased Normal Annuities which shall have theretofore become payable from such Fund: provided, however, that to the extent that the total cost of such Normal Annuities exceeds the amount of the Fund, if such be the case, there shall be a proportionate reduction in the amount of each such benefit.

(ii) by purchasing, in the manner provided in Section 13 of this Part II, a Normal Annuity for such Participant who, on the date of termination of the contract was at least 65 years of age, in the amount to which such Participant would have been entitled under the contract had he retired on the day preceding such termination of the contract: provided, however, that to the extent that the total cost of purchasing such Normal Annuities exceeds the total balance remaining in the Fund, if such be the case, there shall be a proportionate reduction in the amount purchased for each such Participant.

(iii) any balance remaining in the Fund after providing for Normal Annuities as specified in sub-paragraphs (i) and (ii) above, shall be apportioned among the remaining persons who were Participants on the date of such termination and such Participants who terminated employment during any period of Temporary Suspension of Deposits, as defined in Section 15, of this Part II, which occurred immediately prior to such termination of this contract, in amounts proportionate to the respective actuarial reserves of such Participants on the date of termination of the contract and applied to purchase deferred paid-up annuities on the basis of the table of purchase rates in Part III of this contract, such table to be furnished upon termination of this contract.

(b) Cash Withdrawal—On notification from the Owner that a trust agreement exists for the purpose of continuing the pension program

previously provided by this contract, and that this trust agreement has been approved by the Internal Revenue Service for this purpose, then the Company shall pay to the Trustees under the said trust agreement the balance of the accumulated annuity fund provided that the Company shall be entitled to withdraw from the Fund, before payment, a sum equal to its loss on the withdrawal (but not, in any event, greater than 5% of the Fund). Except with the consent of the Company, the total amount that can be transferred with respect to the Fund in any 12 month period shall not exceed 25% of the amount available for transfer. After any part of the Fund has been transferred, interest shall be credited at a rate of  $\frac{1}{4}$  of 1% less than prior to such transfer.

#### 17. RESTRICTIONS IN FIRST TEN YEARS:

(a) During the first ten years after the effective date of this Contract, the benefits provided by the Employer's contributions for "highly compensated" Employees will be subject to the condition set forth in subdivisions (c) and (d) hereof.

(b) For the purpose of these conditions:

(1) "Highly compensated" Employees shall refer to the twenty-five highest paid Employees as of the time of establishment of the plan, including any such high paid Employees who are not Participants at that time but may later become Participants, but excluding any Employees whose annual benefit provided will not exceed \$1,500.

(2) Unrestricted benefits at any time means benefits of the form called for by the Contract, including any withdrawal values available to a living Employee and any death or survivor's benefits payable on behalf of an Employee who dies after retirement, which have been provided by contributions not exceeding the larger of the following amounts:

(i) \$20,000, or

(ii) an amount equal to 20 per cent of the first \$50,000 of the Employee's average regular annual compensation multiplied by the number of years since the effective date of the Contract.

(3) Supplemental retirement income payments means any current payments to a retired Employee sufficient, together with his unrestricted benefits, to bring the total current payments to him up to the full retirement income benefits provided under the Contract.

(c) If the plan is terminated or the full current costs thereof have not been met at any time within ten years after its establishment, the funds or benefits which any highly compensated Employee may receive (including any restricted benefits but exclusive of any supplemental retirement income payments he has already received up to that time) shall be limited to his unrestricted benefits at that time.

(d) These conditions shall not restrict the full payment of any survivors' benefits on behalf of an Employee who dies while the plan is in full effect and its full current costs have been met.

(e) The foregoing conditions do not restrict the current payment of full retirement income benefits called for by the plan for any retired

Employee while the plan is in full effect and its full current costs have been met.

(f) On termination of the Contract during the first ten years, any funds in excess of those for the unrestricted benefits of highly compensated Employees shall be reallocated among all other Employees in proportion to the reserves at that time for their accrued benefits, and used to provide additional benefits of the same type.

Notwithstanding the foregoing limitation upon payment of restricted benefits to an Employee in the event of termination of employment; the Company will, at the request of a terminating Employee, distribute in a lump sum, the total amount of such Employee's benefits under the contract, upon receipt of a written certification from the Owner that adequate provision has been made for the repayment of any part of such distribution representing the "restricted benefit" portion thereof, in the event of discontinuance of this contract, or default in payment of the full current costs thereof as provided in Section 15 hereof.

For purposes of this requirement, adequate provisions for repayment shall be deemed to have been made if the Employee shall have agreed with the Employer that at or before the distribution of such total benefits by the Company, the Employee will deposit with a depository acceptable to the Employer, property or securities having a fair market value of not less than 125% of the "restricted benefit" amount which would be repayable if this policy had been discontinued on the date of such distribution and, further, the Employee shall have agreed that he will, at all times prior to the date the Employer shall have paid the full current costs for 10 years on this contract, maintain in such deposit, property or securities of not less than 125% of his "restricted benefit" amount.

On the termination of the contract as above, any restricted payments for a retired Employee shall from such date be held by the Company. If the contract is later reinstated, the restricted benefits held shall be paid to the retired Employee, and his retirement payments shall thereupon be resumed. On the discontinuance of the contract, any restricted benefits for retired Employees then held, together with the present value of restricted future retirement payments, shall be forfeited by such Employees, and shall be applied as provided in the next-to-last paragraph of this Provision.

On the discontinuance of this policy prior to the payment of the full current costs hereunder, any sums then held unpaid by the Company under the terms of this Provision, together with the cash values of restricted benefits of all Employees then covered hereunder, shall be applied on a pro rata basis to continue in force all unrestricted benefits in effect at the discontinuance, for so long as such sums may serve. During this period of extension, the termination of employment of an Employee shall not terminate his coverage hereunder.

If, during the period in which this Provision would be applicable, the regulations of the Internal Revenue Service are amended so that the restrictions hereof are no longer required, then this Provision shall be cancelled from the effective date of the amendment.

PT. III—TABLE 1A.—SINGLE PREMIUM TO PROVIDE AN IMMEDIATE MODIFIED CASH REFUND ANNUITY OF \$1 PER MONTH

Retirement age	Single premiums					
	r-0	r-1	r-2	r-3	r-4	r-5
<b>Females:</b>						
55	\$211.53	\$211.55	\$211.62	\$211.74	\$211.92	\$212.15
56	206.89	206.91	206.99	207.12	207.32	207.58
57	202.15	202.17	202.26	202.41	202.63	202.92
58	197.31	197.34	197.44	197.60	197.85	198.17
59	192.39	192.42	192.53	192.71	192.99	193.35
60	187.38	187.42	187.54	187.75	188.05	188.46
61	182.31	182.35	182.48	182.72	183.06	183.51
62	177.16	177.21	177.36	177.62	178.00	178.51
63	171.96	172.01	172.18	172.47	172.89	173.45
64	166.70	166.76	166.95	167.27	167.74	168.35
65	161.38	161.45	161.65	162.01	162.52	163.20
66	156.01	156.08	156.30	156.70	157.26	158.01
67	150.56	150.64	150.89	151.32	151.95	152.79
68	145.04	145.13	145.40	145.89	146.59	147.54
69	139.46	139.56	139.87	140.42	141.22	142.30
70	133.86	133.97	134.32	134.95	135.86	137.10
71	128.27	128.39	128.80	129.52	130.58	131.99
72	122.77	122.91	123.38	124.21	125.41	127.01
73	117.38	117.55	118.09	119.03	120.39	122.19
74	112.13	112.32	112.94	114.00	115.54	117.55
75	107.02	107.24	107.93	109.13	110.84	113.09
<b>Males:</b>						
55	189.64	189.69	189.84	190.11	190.50	191.01
56	185.07	185.13	185.30	185.59	186.01	186.56
57	180.45	180.51	180.69	181.01	181.47	182.06
58	175.77	175.83	176.03	176.37	176.87	177.51
59	171.02	171.09	171.31	171.68	172.21	172.90
60	166.21	166.28	166.52	166.92	167.49	168.25
61	161.34	161.41	161.67	162.11	162.73	163.56
62	156.41	156.49	156.77	157.25	157.93	158.84
63	151.43	151.52	151.83	152.35	153.10	154.19
64	146.42	146.52	146.86	147.43	148.27	149.36
65	141.40	141.51	141.88	142.52	143.44	144.64
66	136.38	136.51	136.92	137.63	138.64	139.96
67	131.42	131.56	132.01	132.79	133.89	135.33
68	126.48	126.64	127.13	127.98	129.18	130.76
69	121.56	121.73	122.27	123.19	124.51	126.24
70	116.64	116.82	117.41	118.43	119.87	121.77
71	111.72	111.92	112.58	113.70	115.29	117.37
72	106.87	107.09	107.82	109.05	110.80	113.07
73	102.09	102.34	103.14	104.50	106.42	108.91
74	97.40	97.67	98.55	100.04	102.15	104.88
75	92.79	93.09	94.06	95.70	98.01	101.00

"r" is the ratio of (i) the participant's contributions accumulated at interest to (ii) the product of 12 times the participant's monthly retirement benefit an adjustment, by straightline interpolation, of the factors in this table will be made where the ratio is not an integer.

Note: The provisions of sec. 13 of pt. II of this contract should be read in applying the foregoing table. The rates shown above are subject to change as provided in sec. 6 of pt II of this contract. The rates above are applicable to purchases made during the 1st 5 contract years.

PT. III—TABLE 1-B—SINGLE PREMIUM TO PROVIDE AN IMMEDIATE MODIFIED CASH REFUND ANNUITY OF \$1 PER MONTH

Retirement age	Single premiums					
	r-0	r-1	r-2	r-3	r-4	r-5
<b>Males:</b>						
55	\$193.69	\$193.74	\$193.90	\$194.17	\$194.56	\$195.07
56	188.91	188.96	189.13	189.42	189.84	190.40
57	184.06	184.12	184.31	184.62	185.08	185.68
58	179.17	179.23	179.43	179.77	180.26	180.91
59	174.21	174.28	174.49	174.87	175.40	176.09
60	169.20	169.27	169.50	169.90	170.48	171.24
61	164.12	164.20	164.46	164.89	165.52	166.35
62	159.00	159.09	159.36	159.84	160.53	161.43
63	153.84	153.93	154.24	154.76	155.51	156.51
64	148.65	148.75	149.09	149.66	150.50	151.59
65	143.46	143.57	143.94	144.58	145.50	146.71
66	138.28	138.41	138.82	139.52	140.53	141.86
67	133.15	133.30	133.75	134.52	135.63	137.07
68	128.48	128.23	128.72	129.57	130.77	132.35
69	123.01	123.18	123.72	124.64	125.96	127.69
70	117.95	118.14	118.73	119.74	121.19	123.08
71	112.91	113.11	113.77	114.89	116.48	118.56
72	107.94	108.17	108.89	110.12	111.87	114.15
73	103.05	103.30	104.10	105.46	107.38	109.87
74	98.26	98.53	99.41	100.90	103.01	105.74
75	93.55	93.86	94.82	96.46	98.78	101.77
<b>Females:</b>						
55	216.61	216.64	216.71	216.83	217.01	217.24
56	211.71	211.74	211.82	211.95	212.15	212.41
57	206.72	206.74	206.83	206.98	207.20	207.49
58	201.63	201.66	201.75	201.92	202.16	202.49
59	196.46	196.49	196.60	196.78	197.06	197.42
60	191.21	191.25	191.37	191.58	191.88	192.29
61	185.90	185.94	186.07	186.31	186.65	187.10
62	180.53	180.57	180.72	180.98	181.36	181.87
63	175.10	175.15	175.32	175.61	176.03	176.59
64	169.62	169.68	169.87	170.19	170.66	171.27
65	164.10	164.16	164.37	164.72	165.24	165.92
66	158.52	158.59	158.81	159.21	159.77	160.53
67	152.88	152.95	153.20	153.63	154.26	155.10
68	147.17	147.25	147.53	148.01	148.72	149.67
69	141.41	141.51	141.82	142.36	143.16	144.25
70	135.63	135.74	136.10	136.72	137.64	138.88
71	129.88	130.01	130.42	131.14	132.19	133.60
72	124.23	124.37	124.84	125.67	126.87	128.47
73	118.70	118.87	119.41	120.35	121.71	123.52
74	113.32	113.51	114.13	115.19	116.72	118.74
75	108.09	108.30	109.00	110.19	111.91	114.16

"r" is the ratio of (i) the participant's contributions accumulated at interest to (ii) the product of 12 times the participant's monthly retirement benefit an adjustment, by straightline interpolation, of the factors in this table will be made where the ratio is not an integer.

Note: The provisions of sec. 13 of pt. II of this contract should be read in applying the foregoing table. The rates shown above are subject to change as provided in sec. 6 of pt. II of this contract. The rates above are applicable to purchases made subsequent to the 1st 5 contract years with deposits made during the first 5 contract years.

PT. III—TABLE 1C.—SINGLE PREMIUM TO PROVIDE AN IMMEDIATE JOINT AND  $\frac{1}{2}$  CONTINGENT ANNUITY

Age of female contingent annuity	Retirement age of male participant	
	65	70
60	\$172.23	
61	170.45	
62	168.77	
63	167.10	
64	165.44	
65	163.80	\$146.87
66	162.21	144.93
67	160.69	143.06
68	159.25	141.26
69	157.85	139.51
70	156.51	137.78

Note: Amounts of other ages will be furnished upon request.

The provisions of sec. 13 of pt. II of this contract should be read in applying the foregoing table. The rates shown above are subject to change as provided in sec. 6 of pt. II, of this contract.

The above amounts are applicable to purchases made during the first 5 contract years. Values for subsequent purchases shall be furnished on request.

PT. III—TABLE 1D.—SINGLE PREMIUM TO PROVIDE AN IMMEDIATE JOINT AND  $\frac{3}{4}$  CONTINGENT ANNUITY

Age of male contingent annuitants	Retirement age of female participant: 65
60	\$179.66
61	178.38
62	177.16
63	175.98
64	174.86
65	173.79
66	172.77
67	171.81
68	170.90
69	170.05
70	169.25

Notes: Amounts for other ages will be furnished upon request. The provisions of sec. 13 of pt. II of this contract should be read in applying the foregoing table. The rates shown above are subject to change as provided in sec. 6 of pt. II of this contract. The above amounts are applicable to purchases made during the 1st 5 contract years. Values for subsequent purchases shall be furnished on request.

PT. III—TABLE 2.—SINGLE PREMIUM TO PROVIDE AN IMMEDIATE LIFE ONLY ANNUITY OF \$1 PER MONTH

Retirement age	Single premium		Retirement age	Single premium	
	Male	Female		Male	Female
55	\$189.64	\$211.53	66	136.38	156.01
56	185.07	206.89	67	131.42	150.56
57	180.45	202.15	68	126.48	145.04
58	175.77	197.31	69	121.56	139.46
59	171.02	192.39	70	116.64	133.86
60	166.21	187.38	71	111.72	128.27
61	161.34	182.31	72	106.87	122.77
62	156.41	177.16	73	102.09	117.38
63	151.43	171.96	74	97.40	112.13
64	146.42	166.70	75	92.79	107.02
65	141.40	161.38			

Note: The provisions of sec. 13 of pt. II of this contract should be read in applying the foregoing table. The rates shown above are subject to change as provided in sec. 6 of pt. II of this contract. The above amounts are applicable to purchases made during the first 5 contract years. Values for subsequent purchases shall be furnished on request and shall be computed on the same basis as the normal annuity rates then in effect.

PT. III—TABLE 3.—SINGLE PREMIUM TO PROVIDE AN IMMEDIATE ANNUITY OF \$1 PER MONTH PAYABLE FOR 5 YR CERTAIN AND LIFE THEREAFTER

Retirement age	Single premium		Retirement age	Single premium	
	Male	Female		Male	Female
55	\$190.95	\$212.13	66	139.82	157.93
56	186.50	207.55	67	135.18	152.70
57	181.99	202.88	68	130.59	147.44
58	177.44	198.13	69	126.05	142.19
59	172.83	193.31	70	121.56	136.97
60	168.17	188.41	71	117.14	131.84
61	163.47	183.46	72	112.83	126.84
62	158.74	178.45	73	108.63	121.64
63	153.99	173.39	74	104.58	117.34
64	149.24	168.28	75	100.67	112.85
65	144.51	163.13			

Note: The provisions of sec. 13 of pt. II of this contract should be read in applying the foregoing table. The rates shown above are subject to change as provided in sec. 6 of pt. II of this contract. The above amounts are applicable to purchases made during the first 5 contract years. Values for subsequent purchases shall be furnished on request and shall be computed on the same basis as the normal annuity rates then in effect.

PT. III—TABLE 4.—SINGLE PREMIUM TO PROVIDE AN IMMEDIATE 10 YR CERTAIN AND LIFE THEREAFTER ANNUITY OF \$1 PER MONTH

Age	Single premium	
	Male	Female
55	\$195.00	\$214.14
56	190.88	209.79
57	186.74	205.38
58	182.59	200.91
59	178.44	196.39
60	174.29	191.83
61	170.16	187.24
62	166.05	182.64
63	161.98	178.04
64	157.97	173.45
65	154.04	168.91
66	150.21	164.42
67	146.49	159.99
68	142.91	155.39
69	139.45	151.44
70	136.14	147.37
71	133.00	143.47
72	130.05	139.78
73	127.31	136.31
74	124.78	133.06
75	122.46	130.03

Note: The provisions of sec. 13 of pt. II of this contract should be read applying the foregoing table. The rates shown above are subject to change as set forth in sec. 6 of pt II. The rates above are applicable for purchases made during the 1st 5 yr. Values for subsequent purchases shall be furnished on request and shall be computed on the same basis as the normal annuity rates then in effect.



## GOVERNMENTAL PENSION PLANS OF THE STATE OF NEW YORK AND OF THE CITY OF NEW YORK: A SUMMARY AND ANALYSIS

The State of New York has codified a comprehensive system of pension plans covering the retirement benefits afforded employees of the State government and most local governments. The only significant exception to this pre-emption by the State are the pension plans covering employees of the City of New York, which are, in general governed by the Administrative Code of the City of New York.

This report contains a summary and analysis of the governmental pension plans in the State of New York and the City of New York on points of coverage, funding, financing, and fiduciary standards. An in-depth examination of these plans on this basis is contained in the report next following, entitled "Governmental Pension Plans of the State of New York and of the City of New York: Coverage, Funding, Financing and Fiduciary Standards." References to *Report* will be to the aforementioned report. References to *Code* will be to the Administrative Code of the City of New York. References to *R & S* will be to the Retirement and Social Security Law of the State of New York. References to *EL* will be to the Education Law of the State of New York.

### I. COVERAGE

Coverage should, definitionally, contain a number of factors regarding the discussed pension plan. Perhaps the first item for discussion would be whether a given pension plan constitutes a "governmental plan." The Employee Retirement Income Security Act of 1974 (ERISA), P.L. 93-406, 93d Cong., 2d Sess. (1974) provides that a "governmental plan" includes any plan

established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing \* \* \*. Int. Rev. Code of 1954, Sec. 414(d).

The scope of this definition is not entirely clear at this time. There are, to date, no regulations of either the Department of the Treasury or the Department of Labor on this section or its equivalent in the Labor portion of ERISA (Title I). See ERISA, Sec. 2(32). The following factors, however, may be relevant in weighing the "governmental" qualities of a given pension plan:

1. Establishment by State statutes, local ordinances, or the State constitution—such official establishment tends to make the plan appear governmental;

2. Composition of the body managing of the plan—if they are elected or appointed governmental officials, the plan appears more likely "governmental";

3. Payment of the salaries of covered employees with State or local funds—makes the plan appear more governmental;

4. Rights of covered employees to strike and bargain collectively—are these rights more like government employees or private sector employees;

5. Source of income of the employer (is it from State and local revenues, private activities, or contributions)—if the employer is supported by State or local revenues it appears more governmental;

6. "Police powers" held by the employing body, including taxing powers—the more of these powers, the more likely it appears that the plan is "governmental;"

7. Compliance of the plan with the requirements for private pension plans under ERISA—if the plan meets the ERISA requirements, substantial as they are to meet, it may be inferred that, perhaps, the unit considers the plan nongovernmental; and

8. Functions performed by the employer—are they "proprietary" or "governmental."

These points should be considered merely factors which may tend to evidence "governmentalness" in a pension plan. They should not be considered conclusive nor should any single factor be thought enough to guaranty "governmental" treatment by the Departments of Labor and the Treasury.

With respect to the State of New York and the City of New York, the pension plans covering State and City employees would seem assured of "governmental" treatment, since they are set up under either statutes or ordinances and are funded by either general, tax-raised revenues or such revenues and employee contributions.

The second element which may be examined under "coverage" would be the concept of including "part-time" personnel within the pension plan. Most of the pension plans in the State of New York or City of New York do not appear to distinguish between full-time and part-time individuals in their pension plan coverage, although many plans do require some form of permanence in the employment, such as working for six months prior to participation. The plans containing such specific directive include:

1. State Employees' Retirement System—participation of an employee in the plan is not required until after six months service. R & S, Sec. 40(b) (1).

2. State Teachers' Retirement System—participation may be denied teachers serving on a temporary basis or "any other than a per annum basis." EL, Sec. 503(2).

3. New York City Employees' Retirement System—requires a six month term prior to participation. Code, Sec. B3-3.0.

4. New York City Police Pension System—requires both a probationary period and "permanent appointments in the police force. . . ." Code, Sec. B18-12.0.

5. New York City Fire Department Article I-A Plan—requires probationary period, Code, Sec. B19-7.1.

6. New York City Fire Department Article I-B Plan—requires probationary period, Code, Sec. B19-7.55.

7. New York City Board of Education Retirement System—requires that employees be "permanently employed." EL, Sec. 2575(a).

## II. FUNDING

Funding, for the purposes of this analysis, means the obligation of the State and local employers and the covered employees to contribute to the pension trust fund to provide moneys sufficient to pay all benefits required and accrued. There are a number of factors

within the examination of funding provisions which would seem to warrant special and independent analysis. These are (1) the contributory or non-contributory nature of the plan; (2) the percentage of employee contributions to the fund; (3) the use of actuarially computed governmental contribution formulae; (4) the methodology and actuarial assumptions used by the government where actuarial formulae are adopted; (5) the legal basis for the formula, i.e., statutes, constitution, or regulations; and (6) the existence of periodic review of the actuarial procedures adopted.

*A. Contributory or noncontributory nature of the pension plans*

All the State pension and retirement systems are basically noncontributory. See R & S, Sec. 75. The City plans, however, appear to contributory except for the Board of Education Retirement Plan, which appears to be noncontributory. EL, Sec. 2575(a).

*B. Employee contributions: salary percentages*

The employee contributions for City plans do not appear to be expressed in specific percentages but, rather, are the actuarially required contribution. Therefore, analysis of this requirement would not appear necessary because the percentages could be different for different employees, depending upon age, salary, etc.

*C. Type of formula for governmental contributions*

All governmental contributions in the State plans and City plans are actuarially determined. Generally, there are normal contributions, to fund the current accruals and costs of the plan, deficiency contributions for amortizing past service liabilities and, in many plans, administrative contributions for the administration costs of the plan. The plans which do not operate actuarially are limited to the Board of Education Retirement System, which is funded on a "pay as you go" system and, perhaps, the closed funds, which do not state their funding but, rather, are supported by a number of sources including fines and penalties applicable to either the Street-Cleaning Department or the Health Department. See EL, Sec. 2575(a) and Code, Secs. EL, Sec. 2575(a) and Code, Secs. G51-3.0, G51-1.0.

*D. Actuarial methodology and assumptions in governmental contribution-computation formulae*

Methodology, for the purpose of this report, means the basic formulae utilized to compute contributions of a governmental employer to a pension plan utilizing actuarial computation methods. The methodology means, generally, the enumerated costs which must be funded.

The methodologies adopted by the various governmental pension plans using actuarial computations of employer contributions are:

1. New York State Employees' Retirement System—normal contributions sufficient to provide "all the benefits, other than those on account of prior service, granted by this article and which are payable from funds contributed to the pension accumulation fund." R & S, Sec. 23(b)(1). The deficiency contribution is sufficient to pay "the accrued liability of such employer by reason of prior service of those in its employ who are members of the retirement system \* \* \*. Such rate shall be that proportion of the total annual compensation \* \* \* equivalent to four per centum of such accrued liability." R & S, Sec. 23(b). The administrative contributions are those sufficient to cover "expenses of the retirement system" including 30 year amortization of the retirement system building. R & S, Sec. 23(e) (3).

2. New York State Teachers' Retirement System—a normal contribution computed as "the uniform and constant percentage of the earnable compensation of the average new entrant, who is a contributor, which if contributed on the basis of the compensation of such contributor throughout his entire period of active service, would be sufficient to provide for the payment of a death benefit \* \* \* and to provide at the time of his retirement the total amount of his pension reserve." Also a deficiency contribution sufficient to discharge the other liabilities of the fund at rate of four percentum per annum. EL, Sec. 517. There is also an administrative contribution. EL, Sec. 519.

3. New York State Policemen's and Firemen's Retirement System—a normal contribution which is "sufficient to provide all the benefits, other than those on account of prior service, granted by this article \* \* \*" and a deficiency contribution, generally sufficient to amortize the past service liability at four percent per annum, and an administrative contribution sufficient to pay the expenses of the system and to amortize the cost of the system's building over thirty years. R & S, Sec. 323.

4. New York City Employees' Retirement System—normal contributions are sufficient to fund "the amount of the total liability for all benefits \* \* \* excluding the liability for benefits attributable to the annuity savings fund," and further computed by deducting from "the total liability the sum of the present value of all required future deficiency contributions and the total funds on hand \* \* \* and dividing the remainder by one percentum of the present value of the prospective future salaries of all members \* \* \*" Code, Sec. B3-17.0. The deficiency contribution is sufficient to amortize the past service liability for a period of 35 years. Code, Sec. B3-17.0.

5. New York City Police Retirement System—a normal contribution arrived at by deducting "from the amount of such total liability the sum of the present value of all required future deficiency contributions, the present value of all future member contributions on account of dependent benefits and the total funds on hand \* \* \* and by dividing the remainder by one percentum of the present value of the prospective future salaries of all members \* \* \*" Code, Sec. B18-24. The deficiency contribution is sufficient to amortize the difference between the accrued liability excluding liability for benefits attributable to the annuity savings fund \* \* \* and the total funds on hand over a period of thirty-five years. Code, Sec. B18-24.0.

6. New York City Fire Department Retirement System—the employer contributes an amount necessary to "pay all pension and all death benefits allowable." Code, Sec. B19-7.24(a). The contributions are to be sufficient to cover "the pension to which he might be entitled or which might be payable because of his city-service \* \* \*" Code, Sec. B19-7.22(b).

7. New York City Teachers' Retirement System—normal contributions determined by adding together the present value of all required future deficiency contributions and the funds on hand and subtracting the figure from the total benefit liability, and dividing the resultant figure by one percent of the present value of prospective future salaries of all contributors. Code, Sec. B20-26.0. The deficiency contributions are sufficient to amortize the accrued liability less total funds on hand over a thirty-five year period. Code, B20-26.0.

The actuarial assumptions are those assumptions which must be made to compute the contributions under the methodology adopted. Examples of the requisite actuarial assumptions would be assumptions on life expectancy, job turnover, and prospective expansion of the labor force covered by the plan. The actuarial assumptions of the various pension plans are not stated in the statutes delineating the actuarial methodology or in the Code, with certain limited exceptions. In computing the deficiency contributions for the New York City Teachers' Retirement System, the deficiency contributions for the New York City Police Retirement System, and the New York City Employees' Retirement Plan, a four percent interest rate is assumed. Other assumptions for actuarially funded plans are made by the actuary for such plan.

### *E. Authorization for actuarial formula*

All of the aforementioned actuarial formulae are authorized by either the State statutes or the New York City Code, whichever is applicable to the plan discussed. Further delineation of the actuarial factors and formulations are left to the actuaries or jurisdictions involved in operating the plans, and are neither by statute nor ordinance.

### *F. Review of actuarial determinations*

Most of the pension laws for the State or City of New York specify continued actuarial review. With regard to each plan which is actuarial in character, the following are the specific references and requirements for continued actuarial review:

1. New York State Employees' Retirement System—The actuary "from time to time, but at least once in each five years, shall make such investigation of the mortality, service and compensation experience of the members as the comptroller may authorize." R & S, Sec. 11(b).

2. New York State Teachers' Retirement System—Annual determination by the actuary of the "rate of contribution which is equivalent to the amount of the contribution next due in accordance with the aforesaid schedule." EL, Sec. 517(f)(1).

3. New York State Policemen's and Firemen's Retirement System—Normal contributions are "computed each year by means of an actuarial valuation." R&S, Sec. 323(b). Other activities of the actuary are to be "from time to time but at least once in each five years," and include investigation "of the mortality, service and compensation experience of the members." R & S, Sec. 311(b).

4. New York City Employees' Retirement System—annual reports to the City are required and must include valuation of all plan assets certified by an actuary. Code, Sec. B3-12.0. Furthermore, the actuary appointed by the Board of Estimate must keep data as is needed and make an actuarial investigation into mortality, service and compensation experience every five years. Code, Sec. B3-11.0.

5. New York City Police Retirement System—same as City Employees' Plan. Code, Sec. B18-18.0.

6. New York City Firemen's Retirement System—Same as City Employees' Plan. Code, Secs. B19-7.16, 7.17.

7. New York City Teachers' Retirement System—Same as City Employees' Plan. Code, Secs. B20-13.0, 16.0.

### III. FINANCING

The safety of the pension guaranteed an employee of the State of New York or of the City of New York under the various plans therein in force, would appear to depend at least in part upon the financing aspect of the plans. This may be particularly true because the level of benefits cannot be reduced under a provision of the New York State Constitution, Article V, Sec. 7. Financing, for the purpose of this report, will mean the various assurances the employee has that the money to pay his or her benefits will be available. This includes the type of obligation the governmental employer has to contribute (i.e., statutory, ordinances, contractual, etc.), the ability of the employee to compel the contribution by writ of mandamus, and the ability of the employer to raise funds in excess of those stated in nonactuarially computed plans. Because the last of these three factors is not really applicable in actuarially funded plans, as is the case in New York and New York City, and particularly when the actuarial assumptions and valuations are continuously reviewed, it will not be discussed herein.

#### *A. Obligation to contribute*

The pension and retirement systems of the State and City of New York are funded largely or entirely by employer contributions. These contributions, with regard to the State plans, are compelled by statutes. The contributions for the City plans are compelled by ordinance.

#### *B. Sources of and limitations on governmental contributions*

Generally, the taxing powers of the City of New York and the State of New York, as well as the bonded debt powers, constitute the sources of revenues for promised pension contributions. The State pension plan funds are paid out of general revenues supported by taxes. The New York City plans are similarly paid out of general revenues, with certain exceptions.

The closed plans, the Department of Street-Cleaning and Department of Health plans, are funded in part by fines and penalties levied and collected by those departments.

#### *C. Compelling benefits through mandamus*

With only one exception, the pension plan of the New York City Board of Education, all the statutes and ordinances authorizing and directing pension contributions by the governmental agency in either New York State or New York City are phrased in mandatory terms which should authorize writ of mandamus or so-called article 78 proceeding. This proceeding has been held the proper means of enforcing and compelling pension benefits. See *Report* at 140.

### IV. FIDUCIARY STANDARDS

The fiduciary standards which apply to a pension plan may be as significant to the solvency and stability of the plan as the funding requirements, since misdealing by the trustees of the plan may easily defeat any required funding or financing provisions. Among the points which may be examined with regard to a pension plan are (1) limitations on fiduciary investment activities, (2) the selection and qualification of fiduciaries, (3) provisions in the law regarding enforcement and policing of investment prohibitions, including audits and reports, (4) accounting methods and records required, (5) prohibitions against self-dealing or loans to fiduciaries, and (6) requirements that fiduciaries be bonded.

#### *A. Limitations on investment activity*

In no pension plan of either New York State or New York City is the trustee granted total discretionary investment authority. In the State plans the general limitation found is much like that in the State Employees' Plan, which permits investment in any security or investment in which funds of the State may generally be invested, except that in addition thereto the comptroller or trustee may invest in corporate or railroad debt obligations, debt obligations of oil, gas, or electrical corporations, telephone corporations, if they are rated within the three highest standard rating classifications, and similar investments. There are also percentage limitations on different types of investment.

The New York City pension plans are governed first by a State law which prohibits investments outside a list authorized for savings bank

investments. See *Report*, Appendix. The plans are subject to this list with certain modifications, which vary by plan and which are too detailed and lengthy to be discussed in this summary report. They are discussed in detail in the main Report.

It should also be noted that the constitutional restriction against impairment of pension rights has been interpreted to preclude statutory mandated investments. The Legislature may give the trustee authority to invest in a specified investment (such as New York City Municipal Assistance Corporation bonds), but it may not compel such investments. *Scaglione v. Levitt*, 37 N.Y. 2d 507 (Ct. App. 1975).

#### *B. Selection and qualification of fiduciaries*

The fiduciaries of the various plans may be the comptroller or a board of trustees specifically selected for that purpose. The following are the designated trustees of the various plans in New York City and New York State:

1. New York State Employees' Retirement System—The trustee is the comptroller of the state. The comptroller is elected. N.Y. Constit. Art. V, Sec. 1.

2. New York State Teachers' Retirement System—The Teachers Retirement Board are trustees. Custodian is the head of the Department of Finance and Taxation. The Board consists of 9 members: one who is an executive officer in a bank, two who are or were members of a board of education, one who is or was an executive officer of an insurance company, two administrative officers of the state school system, the comptroller or an appointee, and three members elected for three year terms. EL, Sec. 504.

3. New York State Policemen's and Firemen's Retirement System—The comptroller of the state is trustee.

4. New York City Employees' Retirement System—Headed by a Board of Trustees selected as: one representative of the mayor (1 vote), the president of the council (1 vote), the city comptroller (1 vote), president of each borough (1/5 vote each), three employee representatives (1 vote each). Code, Sec. B3-2.1.

5. New York City Police Retirement System—Headed by a Board of Trustees, composed of: the police commissioner (1½ votes), the comptroller of the city (1½ votes), a representative of the mayor (1½ votes), the director of finance of the city (1½ votes), the president of the patrolmen's benevolent association (1 vote), first vice-president of the patrolmen's benevolent association (1 vote), second vice-president of the patrolmen's benevolent association (1 vote), chairman of the board of trustees of the patrolmen's benevolent association (1 vote), president of the captains' endowment association (½ vote), president of the lieutenants' benevolent association (½ vote), president of the sergeants' benevolent association (½ vote), president of the detectives' endowment association (½ vote). Code, Sec. B18-13.0.

6. New York City Firemen's Retirement System—Headed by the Board of Trustees composed of: the fire commissioner (3 votes), the comptroller of the city (3 votes), a representative of the mayor (3 votes), director of finance of the city (3 votes), president of the uniformed firemen's association (2 votes), vice-president of the uniformed firemen's association (2 votes), treasurer of the uniformed firemen's association (2 votes), chairman of the board of trustees of the uniformed firemen's association (2 votes), three elected members of the executive board of the uniformed firemen's association (1 vote each), the president of the uniformed pilots and marine engineers association (½ vote). Code, Sec. B19-7.11.

7. New York City Teachers' Retirement System—Headed by the Retirement Board, composed of: president of the board of education or designee, comptroller, two members appointed by the mayor (one a member of the board of education), three members of the retirement association elected by the contributors. Code, Sec. B20-6.0.

8. New York City Board of Education Retirement System—The Board of Education appears to be the administrative head of its own retirement system. EL, Secs. 2575 *et seq.*

9. The Closed Funds—Commissioner of Sanitation is the trustee of the Street-Cleaning Relief and Pension System and the board of estimate would appear to be the trustee of the Department of Health Retirement Plan.

### *C. Enforcement and policing of restrictions on pension plan fiduciaries*

The restrictions on fiduciaries of pension and retirement plans are not necessarily meaningful unless there is some policing and enforcement. Pursuant to this concept of policing, each plan in the State or City of New York must make annual reports. These reports detail the assets of the plans and the activities of the plan to the extent they are relevant. They also permit the public at large, since the reports are published, to be aware of the activities in the pension and retirement systems and, possibly, to prevent or contest improper action by the trustees.

### *D. Accounting methods*

None of the governmental pension plans in New York State or New York City appear to delineate the accounting procedures to be utilized, although accurate accounting methods would appear implicit in the fiduciary's responsibility to report and keep records.

### *E. Self-dealing*

A number of the pension and retirement plans in New York City and New York State preclude trustees or employees of the board from having any interest in the activities of the trust investments. A typical such restriction is that of the New York State Employees' Retirement System, which precludes:

the comptroller nor any person employed on the work of the retirement system (from having):

1. Except as herein provided . . . any interest, direct or indirect, in the gains or profits of any investment of the retirement system, nor, in connection therewith, directly or indirectly, receive any pay or emolument for his services;

2. Except as provided \* \* \*

(a) Directly or indirectly, for himself or as an agent or partner of others, borrow any of its funds or deposits or in any manner use the same except to make current and necessary payments such as authorized by the comptroller, or

(b) Become an endorser, surety, or an obligor in any manner of monies loaned by or borrowed of such funds. R & S, Sec. 13(g).

Similar provisions are contained in the laws governing all the pension or retirement plans of New York State and all the plans of New York City except the Board of Education plan and the closed plans.

It may also be noted that the participants of most of the New York City plans may borrow from their contributed accounts. They usually may borrow up to 50 percent of their contributions, subject to certain restrictions as to duration of the loan and conditions precedent. Generally, these provisions are contained in all the New York City plans except the closed plans and the Board of Education plan.

### *F. Bonding of fiduciaries*

Generally, the fiduciaries of the various State and City plans are not bonded. Specific bonding requirements are contained in the following plans:

1. New York State Teachers' Retirement System—bonding is required of the head of the division of finance and any individuals authorized to perform his or her duties. Such individuals are the custodians of the plan funds. EL, Secs. 507(3), (4).

2. New York City Board of Education Retirement System—May require bonds of its trustees. EL, Sec. 2584.

3. New York Department of Street-Cleaning Relief and Pension System—(CLOSED) The Commissioner of Sanitation for the City of New York, the trustee, is bonded. Code, Sec. G51-5.0.

## GOVERNMENTAL PENSION PLANS OF THE STATE OF NEW YORK AND OF THE CITY OF NEW YORK: COVERAGE, FUNDING, FINANCING AND FIDUCIARY STANDARDS

(By Howard M. Zaritsky, Legislative Attorney, American Law Division.)

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## GOVERNMENTAL PENSION PLANS OF THE STATE OF NEW YORK AND THE CITY OF NEW YORK: COVERAGE, FUNDING, FINANCING AND FIDUCIARY STANDARDS

The laws of the State of New York evidence a legislative policy to provide pension and retirement benefits to all employees of the State Government and of local governments. State statutory law provides the pension framework for plans covering employees of the State Government and most municipal governments. Most employees of the City of New York are covered by plans set up under the Administrative Code of the City of New York.

There are ten major governmental pension plans for employees in the State of New York. Employees of the State Government and of municipal governments, other than the City of New York, are covered by three plans: the New York State Employees' Retirement System (State Employees' Plan), the New York State Teachers' Retirement System (State Teachers' Plan) and the New York State Policemen's and Firemen's Retirement System (Policemen's and Firemen's Plan). The employees of the City of New York are covered under nine plans adopted by that city, which will be discussed in depth later. Also, there are a small number of municipal plans enacted prior to pre-emption of the field by the State. To the extent these plans pay out benefits to employees covered prior to the pre-emption, they are permitted to continue existence. These plans will not be discussed in depth, however, because they may not expand their coverage and, therefore, have little impact on the future of pension plans in New York.<sup>1</sup>

This report will examine the legal structure of the governmental pension and retirement systems in New York: the statutes, ordinances and constitutional provisions governing their operations. The three State plans and nine New York City plans will be discussed in depth with regard to four features: coverage, funding, financing and fiduciary standards.

Coverage, for the purpose of this report, means the group of State and local employees who may participate in the plan. The fact that employees may elect not to participate will not be discussed, nor will requirements regarding years of service. The coverage factor is intended to separate employees of the governmental units by the plans under which they may participate.

Funding, for the purpose of this report, means the contributions required of both employees and the government. The means of computing such contributions will also be discussed, including the actuarial factors used.

Financing, for the purpose of this report, means the method by which the government's contributions and payments of benefits may

<sup>1</sup> The municipal employees, other than those of the City of New York, have been covered by the New York State Employees' Retirement System. Once a municipality has elected to be within that plan, it may not revoke its election. New York Retirement and Social Security Law, Sec. 30(a). (Hereinafter, R & S).

be compelled. Such discussion will include potential for writ of mandamus, and whether the obligations are "general obligations" of the government.

Fiduciary standards, for the purpose of this report, means the duties and responsibilities of trustees of the plans. The general duties of trustees, fiduciary responsibility and the duty to act reasonably, will be discussed as applied to the pension area. Additional responsibilities and limitations on authority will also be examined.

It may also be noted that there is a permanent commission on public employee pension retirement systems created in the executive department of the State. New York State Executive Law, Sec. 800. The commission is empowered to study the types and costs of benefits provided public employees of the State and local subdivisions of the State. The commission communicates with the Governor, the Legislature and other appropriate bodies on pension matters and issues reports recommending means by which the pension systems may be improved. A major report was issued in 1973 entitled "Report of the Permanent Commission on Public Employee Pension and Retirement Systems." The report was supplemented in March, 1975.

#### I. CONSTITUTIONAL PROVISIONS APPLICABLE TO GOVERNMENTAL PENSION SYSTEMS OF THE STATE OF NEW YORK AND THE CITY OF NEW YORK

Probably the most important provision of the New York State constitution with regard to pension plans is Article V, Section 7. This provision states that:

After July first, nineteen hundred forty, membership in any pension or retirement system of the state or of a civil division thereof shall be a contractual relationship, the benefits of which shall not be diminished or impaired. New York Constit., Art. V, Sec. 7.

The purpose of this provision was to make employee's rights to pension benefits enforceable.

Prior to enactment of Article V, Section 7 of the State constitution employee benefits under governmental pension plans were considered gratuitous. Employees were held to have no vested rights in any benefit under a governmental plan. *Day v. Mruk*, 307 N.Y. 349, 121 N.E. 2d 362 (Ct. App., 1954). It was even held that employees had no vested rights in their own compulsory contributions. *Roddy v. Valentine*, 268 N.Y. 228, 197 N.E. 260 (Ct. App. 1935); *Donovan v. Rye*, 271 A.D. 836, 65 N.Y.S. 2d 737 (Sup. Ct., A.D. 1937); and *Graven v. Scott*, 249 A.D. 514, 292 N.Y.S. 771 (Sup. Ct., A.D. 1937). Benefits were only enforceable when the relationship between the employee and employer with respect to such benefits became contractual. This only occurred at retirement or eligibility for retirement. *Roddy v. Valentine* *supra*; *Kieran v. Hunter College Retirement Board*, 255 A.D. 378, 7 N.Y.S. 2d 612 (Sup. Ct., A.D. 1938).

Under the amendment to the State constitution, employees of governmental units of the State have contractual rights in their pension benefits at all times, not only at retirement. These benefits may not be diminished or impaired. The State may not even legislate reductions or impairments of benefits. *Birnbaum v. New York State Teachers Retirement System*, 5 N.Y. 2d 1, 176 N.Y.S. 2d 984, 152 N.E. 2d 241 (Ct. App. 1958); *Brown v. New York State Teachers Retirement*

*System*, 48 Misc. 2d 805, 265 N.Y.S. 2d 807, affirmed 25 A.D. 344, 269 N.Y.S. 2d 649, affirmed 19 N.Y. 2d 779, 279 N.Y.S. 2d 532, 226 N.E. 2d 319 (Ct. App. 1965).

In *Birnbaum*, the Court of Appeals granted a declaratory judgment in favor of participants in the New York State Teachers Retirement System, invalidating adoption of a new actuarial table which could reduce their benefits. The court held that the amendment precluded application of the new table except to teachers hired after its adoption.

In *Brown*, the Court of Appeals upheld a statutory change in the composition of the retirement board. The change diminished the proportionate representation of teachers on the board but the court held that the amendment was intended to protect only pecuniary rights. The amendment was not directed towards such intangible rights as representation.

In a recent decision affirmed by the Court of Appeals, the Supreme Court of New York held that while the rights of participants in governmental pension plans were "contractual," the court could be availed of to interpret the terms of the contract. *Weber v. Levitt*, 41 A.D. 2d 452, 344 N.Y.S. 2d 381 (Sup.Ct., A.D. 1974), affirmed 34 N.Y. 2d 797, 369 N.Y.S. 2d 39, 316 N.E. 2d 327 (Ct. App. 1974). In *Weber*, employees brought suit to determine whether the final average salary for the past three years of employment, upon which their final pensions were determined, should be calculated with all or part of a lump sum payment made upon retirement. The payment was computed as 3 days salary for each year of service. The employee had served 20 years and received an additional 60 days salary and sought to have the entirety computed in his final average compensation. The State sought to have only the part allocable to the last three years, 9 days, so computed. The court ruled with the Comptroller, who represented the State, that only the last 9 days needed be counted under the "contract" as it existed.

Another provision of the New York State Constitution precludes local governments from making gifts of money, property, or additional compensation to individuals.<sup>2</sup> This has been interpreted as precluding extension of higher pensions to individuals who have already retired. *People ex rel. Waddy v. Partridge*, 172 N.Y. 305, 65 N.E. 164 (Ct. App. 1930); *Mahon v. Board of Education*, 171 N.Y. 263, 63 N.E. 1107 (Ct. App. 1930). This rule is not absolute, though. A special exception was written into the State constitution to permit certain special pensions for widows and dependents. This section states that:

nor shall anything in this constitution contained prevent a county, city, town, or village from increasing the pension benefits payable to retired members of a police department or fire department or to widows, dependent children or dependent parents of members or retired members of a police department or fire department; or prevent the city of New York from increasing the pension benefits payable to widows, dependent children or dependent parents of members or retired members of the relief and pension fund of the department of street cleaning of the city of New York. Article 8, section 1.

Therefore, within the limitations of this expressed authorization, the specified municipalities may increase the pensions of certain persons.

<sup>2</sup> Article 8, section 1, states in general, that:

No county, city, town, village, or school district shall give or loan any money or property to or in aid of any individual or private corporation or association, or private undertaking, or become directly or indirectly the owner of the stock in, or bonds of any private corporation or association. . . .

Another constitutional provision permits the State legislature to increase the pensions of any member of a State or local retirement system.<sup>3</sup> Under this authorization, supplemental pensions have been authorized by amendments to State statutes.<sup>4</sup> The amendment is only prospective in its application.

The State constitution also limits the amount of debt a municipality may incur. The constitution does permit counties, cities, towns and villages to exclude the amounts of bonded debt issued to maintain a pension fund or retirement system when computing debt for limitations. This exclusion, however, only applies if the pension or retirement system is not on an actuarial basis.<sup>5</sup> The system must use the bonds to go on an actuarial basis.

## II. GENERAL FIDUCIARY STANDARDS APPLICABLE TO TRUSTEES OF NEW YORK STATE AND NEW YORK CITY GOVERNMENTAL PENSION PLANS AND RETIREMENT SYSTEMS

The various pension and retirement systems of New York State and New York City each contain some limitation on the general powers of the trustees of the plan. Some plans limit the ability of the fiduciary to invest plan assets and others limit the ability of the trustee to borrow from the plan or have an interest in plan investments. Most do both. However, the general fiduciary standards applied to such trustees should be examined to obtain a frame of reference from which the specific limitations may be understood.

The trustee of a governmental pension plan is not in exactly the same posture as the trustee of a private pension plan or of other trusts. *Westchester Chapter, Civil Service Employees Association, Inc. v. Levitt*, 37 N.Y. 2d 519 (Ct. App. 1975). Where most trustees are subject to certain specific standards of care, that of the reasonable investor, the prudent investor, or the investor intending to conserve the assets of the trust, the duties of the governmental plan trustee are more defined by statute. As the aforesaid case noted:

It is obvious \*\*\* that the State Comptroller, within the meaning of section 13 (or sec. 313) of the Retirement and Social Security Law, is not necessarily a trustee in the same sense as a private trustee, or even a public trustee who is or may be charged with the investment of "trust" funds.

<sup>3</sup> New York State Constitution, Article 7, section 8 provides that:

Subject to the limitation on indebtedness and taxation, nothing in this constitution contained shall prevent the legislature from providing for . . . the protection by insurance or otherwise against the hazards of unemployment, sickness and old age . . . or for the increase in the amount of pensions of any member of a retirement system of the state, or of a political subdivision of the state.

<sup>4</sup> See, e.g., Retirement and Social Security Law, sections 160 *et seq.* See also *New York City Charter and Administrative Code*, sections D49-8.0 *et seq.* or examples at the city level.

<sup>5</sup> Article 8, section 5 of the State Constitution states, in applicable part, that:

"In ascertaining the power of a county, city, town or village to contract indebtedness, there shall be excluded:

"D. Serial bonds, issued by any county, city, town or village which now maintains a pension or retirement system or fund which is not on an actuarial reserve basis with current payments to the reserve adequate to provide for all current accruing liabilities. Such bonds shall not exceed in the aggregate an amount sufficient to provide for the payment of the liabilities of such system or fund, accrued on the date of issuing such bonds both on account of pensioners on the pension roll on that date and prospective pensions to dependents of such pensioners and on account of prior service of active members of such system or fund on that date. Such bonds or the proceeds thereof shall be deposited in such system or fund. Each such pension or retirement system or fund thereafter shall be maintained on an actuarial reserve basis with current payments to the reserve adequate to provide for all current accruing liabilities."

The effective date of this provision was January 1, 1939, and to the extent that there is a pension plan currently in effect which was in effect on that date, and is not currently actuarially funded, its bonded debt financing will not be limited where debt is issued to convert the plan to an actuarially funded one.

The area of actual or possible conflict of interest has such consequences as the Legislature, the primary lawmaking organ of the State, may provide. It speaks with plenary power limited only by the Constitution.

Consequently, a conflict of interest, created by statute since before 1940, need not involve an incapacity to act because of the conflict, but only an especial obligation to act fairly on behalf of those concerned with the results of the action taken. In any event, this is no more and this is no less than is expected of a trustee, in the classic sense, confronted with a conflict of interest (Restatement, Trusts 2d, sec. 170, Comment r; 2 Scott, Trusts (3d ed.) sec. 170.16; Bogert, Trusts and Trustees, sec. 543, subd. (H); cf. Business Corporation Law, sec. 713; *Everett v. Phillips*, 288 N.Y. 282, 236-273), 37 N.Y. at 521.

Furthermore, in *Scaglione v. Levitt*, 37 N.Y. 2d 507 (Ct. App. 1975), the court prohibited the Legislature's compelling the trustee to purchase a specific security (Municipal Assistance Corporation bonds) without discretionary judgment as to their advisability. Although *Scaglione* is cited in the *Westchester Chapter* decision, it did not expressly rule on the question of what character is to be attached to the trustee of public pension funds.

The conclusion reached by the analysis of these two decisions is that the trustee of the governmental pension funds is not subject to the full fiduciary rules applicable to private trustees. However, though the Legislature may modify his duties and rights substantially, limiting or expanding his right of investment of plan funds, for example, the Constitutional provision guarantees at least a degree of discretion in the trustee. Within the discretion of the trustee, he or she should be subject to the general rules applicable to officers and employees invested with duties over public funds.

Public officers designated with a charge over public funds are generally treated with trustee-like duties and authorities, subject to applicable statutes and ordinances. They may not commingle funds with their own, nor misappropriate the funds, even in good faith, to non-public purposes. They may not lend or give the funds to private individuals and if they do they may be civilly liable for the lost moneys. See 48 *New York Jurisprudence*, secs. 104-115 (1966, suppl. 1974) (hereinafter, *N.Y. Jur.*).

Therefore, the trustees of public pension funds should be considered as having fiduciary responsibilities within their statutory mandate. While these responsibilities may be altered by applicable statutes, the New York constitution protects the funds from specifically designated investment, such as in *Scaglione*. However, it does not protect the funds or the trustees from having the area of potential investment, subject to the trustee's discretion and judgment, expanded or contracted by the statutes of the Legislature.

### III. THE STATE PENSION PLANS: THE NEW YORK STATE EMPLOYEES' RETIREMENT SYSTEM, THE NEW YORK STATE TEACHERS' RETIREMENT SYSTEM, AND THE NEW YORK STATE POLICEMEN'S AND FIREMEN'S RETIREMENT SYSTEM

Three retirement systems maintained and operated by the State of New York cover the employees of the State of New York and almost all municipal employees outside of New York City. These are the New York State Employees' Retirement System (State Employees Plan), the New York State Teachers' Retirement System (State Teachers' Plan), and the New York State Policemen's and Firemen's Retirement System (State Police and Firemen's Plan).

#### *4. The State Employees' Retirement System*

The New York State Employees' Retirement System (State Employees' Plan) was established in 1920 and is corporate in form. The comptroller of the State is the principal officer of the corporation. R & S, Sec. 10, 11.

##### *1. Coverage*

Under the controlling statutes the State Employees' Plan covers employees of the State of New York and of electing municipalities. Participation in the plan is mandatory for:

1. All persons who enter or re-enter the service of the state or of a participating employer . . . except those:

- (a) In the exempt class of the classified service.
- (b) In the labor class.
- (c) Who are laborers and who are not covered by article nine of the military law.
- (d) In the unclassified service.
- (e) Who are teachers or instructors and who are eligible to membership in another retirement system.

(f) Sixty years of age or over, whose positions in the exempt class, labor class or unclassified service have by reason of a reclassification of positions . . . been placed in the competitive service.

(g) Whose positions are excluded from eligibility for membership in the retirement system and are covered only by old-age and survivors insurance.

(h) Whose positions pay compensation at a rate of less than fifteen hundred dollars a year.

(i) Otherwise specifically provided for by law. R & S, Sec. 40(b)(1).

Certain other individuals are required to become members of the State Employees' Plan if they have entered or re-entered State service in:

State colleges of agriculture, home economics, veterinary medicine, or industrial or labor relations, the state agricultural experiment station at Geneva, or any other institution or agency under the management and control of Cornell University as representative of the state university trustees, or who enter or re-enter service in the state college of ceramics under the management and control of Alfred University as the representative of the state university trustees, and who do not elect the optional retirement program established by article eight-b of the education law. . . .

3. Every policeman and fireman, appointed to and employed by a city, county, town, village, or police or fire district, in a position in the classified civil service, other than in a position in the exempt class, and who is not eligible to become a member of a local pension system. R & S, Sec. 40(b)(2), (3).

Certain other employees may elect to participate, while not required to do so, including:

1. An officer or employee who is in the service of a participating employer on the date it becomes a participating employer, unless his office or position has been excluded from eligibility for membership in the retirement system pursuant to sections thirty or thirty-one of this article.

2. An officer or employee in the service of the state or of a participating employer who would be excluded from membership by the provisions of subdivision e of this section except for the fact that he, nevertheless, may become a member pursuant to a specific provision of law.

3. Any other person in the service of the state or a participating employer, except as provided in subdivision b or subdivision e of this section.

4. Officers or employees of the federal government who have at least five years of member service credit at the time they become federal officers or employees may continue as contributing members. . . .

5. A person who:

(a) Is a teacher within the meaning of subdivision four of section five hundred one of the education law.

(b) Is not a member of the New York state teachers' retirement system and has not elected the optional retirement program established either by article eight-b or by article three, part V of the education law,

(c) . . . enters upon his employment as such a teacher in a state-operated institution or community college under the jurisdiction of the board of trustees of the state university, and

(d) Elects to become a member of this retirement system upon his entry into such employment and at no other time.

6. An officer or employee who is in the service of an institution for the instruction of the deaf, dumb or the blind, which receives state pupils whose instruction and support are paid for by the state or a participating employer.

7. All war veterans in state service on March twenty-first, nineteen hundred thirty, entitled to benefit under the provisions of former section twenty-one-a of the civil service law or former subdivision eight of section three of the public buildings law or section two hundred fourteen or two hundred fifteen of the military law shall have the right to elect to become members of the New York state employees' retirement system, and to be covered by all provisions of law relative thereto. Upon exercising such right, such war veteran shall be deemed to have waived his rights to any benefits under such sections.

8. Any person who is regularly employed under the control of the division of military and naval affairs whose duties in such employment require substantially all normal working hours and whose regular compensation is paid by the United States from funds allocated to the New York army national guard or the New York air national guard. . . . R & S, Sec. 40(e), (d).

The principal non-mandatory membership is from political subdivisions of the State who may become "electing" or "participating employers." They may become "participating employers" by filing with the comptroller of the State an irrevocable resolution of their legislative body. R & S, Sec. 2 (20). The election may first exclude any non-mandatory employees as long as there is a separate agreement to furnish them Federal old age and survivors' insurance. R & S, Sec. 30 (a) (1)-(3).

Certain quasi-public organizations may also become "participating employers" by filing a similar resolution. This would include public authorities, public hospitals and similar bodies. See, e.g., New York State Public Authority Law, Secs. 115, 655, 1059, 1159 and 1210, qualifying a conservation department serving the Adirondack Mountain Authority, the Nassau County Bridge Authority, the Erie County Water Authority and the Onondaga County Water Authority. Private hospitals, though they receive city aid, may not become "participating employers," nor may other basically private institutions. See Ops. Atty. Gen. Nov. 12, 1947 (regarding a recreational facility), Ops. Atty. Gen. No. 168 (1937) (regarding a private nursing home), and Ops. Atty. Gen. No. 191 (1935) (regarding an orphan asylum).

## 2. Funding

The various State pension plans were formerly contributory but in 1966 New York made all its pension plans noncontributory. R & S, Sec. 75-a. Contributions made before 1966 are considered in increasing such employees' pensions on retirement. R & S, Sec. 75-a(e). Funding, therefore, rests today upon the employer.

The employer must make three distinct contributions to the State Employees' Plan: a normal contribution, a deficiency contribution and an administrative contribution. R & S, Sec. 23(b). The rates are actuarially computed.

Normal contributions are intended to liquidate future liability for members' service. Deficiency contributions are intended to liquidate liability on account of services rendered prior to membership in the plan. Administrative contributions are to cover expenses of operating the plans. See *Moore on Behalf of the New York State Employees'*

*Retirement System v. Board of Education*, 274 A.D. 403, 84 N.Y.S. 2d 417, affirmed 299 N.Y. 666, 87 N.E. 2d 59 (Ct. App. 1949).

The statute computes the normal contributions as:

a uniform and constant rate percentum of annual compensation. When applied to the compensation of the average new entrant during the remaining period of his membership, such rate shall be computed to be sufficient to provide all the benefits, other than those on account of prior service, granted by this article and which are payable from funds contributed to the pension accumulation fund. Such rate shall be computed each year by means of an actuarial valuation as prescribed in section eleven of this chapter. R & S, Sec. 23(b) (1)

The deficiency contribution, under the statute, is computed as:

the accrued liability of such employer by reason of prior service of those in its employ who are members of the retirement system. The rate of deficiency contribution for such employer shall then be determined. Such rate shall be that proportion of the total annual compensation of such employees as is equivalent to four percentum of such accrued liability. Such rate shall be applied to the employer's payroll of members, as used in the annual valuation. The cost of making such initial valuation shall be assessed against and paid by the employer. R & S, Sec. 23(b).

Each deficiency contribution must be at least three percent greater than that of the prior year. R & S, Sec. 23(c).

The administrative contribution is statutorily computed as an amount sufficient to cover "expenses of the retirement system," including an amount for thirty year amortization of:

the costs of construction of the retirement system buildings, and the cost of maintenance of such building, for each fiscal year shall be determined at the close of such year. R & S, Sec. 23(e) (3).

The deficiency contributions may be discontinued when they exceed or equal the accrued past service liability. R & S, Sec. 23(b) (2) (e).

### 3. Financing

Because the statutory provision requiring contributions is mandatory in language, as is the requirement that the plan funding be included in the comptroller's budget, both may be enforced by writ of mandamus.<sup>6</sup>

### 4. Fiduciary standards

Apart from the general fiduciary standards discussed *supra*, pp. 136-137, and the constitutional prohibitions against either giving public funds away<sup>7</sup> or lending them to private individuals,<sup>8</sup> the comptroller, as trustee of the plan, has certain designated limitations on his or her

<sup>6</sup> The writ of mandamus has been replaced in New York by the article 78 proceeding, and is available to "compel an act by a public officer or body where the act is required by law to be performed." 23 Carmody-Wait, 2d *Encyclopedia of New York Practice*, Sec. 145: 78 (1968) (hereinafter, *Carmody-Wait*). The conversion from common law writ of mandamus to article 78 proceeding under the Civil Procedure Law and Rules (CPLR) was to "simplify and unify the procedure in connection with the three old remedies of certiorari to review, mandamus, and prohibition, and to wipe out technical distinctions which were snares for suitors approaching the court for relief for proved grievances." *Carmody-Wait*, Sec. 145: 2. "By statute, mandamus will lie to compel the civil service department or municipal commission to issue a certificate to the disbursing or auditing officer that the person to be paid, named . . . have been lawfully employed in their respective positions and to compel the payment of their salaries. . . . Mandamus is the proper remedy to review the action of a civil service commission in refusing to recognize an increase of salary of a civil service employee, and is also available to correct aggrievement arising out of the pension rights or pension payments." *Carmody-Wait*, Sec. 145: 141. Cited thereunder, see *Barbarita v. Board of Estimate*, 83 N.Y.S. 2d 854, affirmed 276 A.D. 751, 92 N.Y.S. 2d 608, affirmed 301 N.Y. 529, 93 N.E. 2d 79 (Ct. App. 1950); and *Bergerman v. Murphy*, 199 Misc. 1008, 102 N.Y.S. 2d 622, mod., on other grounds 278 A.D. 388, 105 N.Y.S. 2d 642, affirmed 303 N.Y. 762, 103 N.E. 2d 545 (Ct. App. 1952).

<sup>7</sup> New York State Constitution, Art. 7, Sec. 8.

<sup>8</sup> *Id.*

responsibility and certain mandatory responsibilities. The comptroller must :

1. Maintain all necessary accounting records, and
2. Keep in convenient form such data as shall be necessary for the actuarial valuation of the various funds of the retirement system, and
3. Established funds, in addition to those provided for by this article, which in his judgment are necessary or required for the proper fiscal management of the retirement system, and
4. Perform such other functions as are required for the execution of the provisions of this article. R & S, Sec. 11(a) (1)-(4).

The statutes setting forth the descriptions of the plan and operating rules for the State Employees' Plan also precluded the comptroller from unrestricted investment authority. He or she may only invest the plan's funds in :

obligations consisting of notes, bonds, debentures, or equipment trust certificates issued under an indenture, which are the direct obligations of, or in the case of equipment trust certificates are secured by direct obligations of, a railroad or industrial corporation, or a corporation engaged directly and primarily in the production, transportation, distribution, or sale of electricity or gas, or the operation of telephone or telegraph systems or waterworks, or in some combination of them ; provided the obligor corporation is one which is incorporated under the laws of the United States, or any state thereof, or of the District of Columbia, and said obligations shall be rated at the time of purchase within the three highest classifications established by at least two standard rating services. The maximum amount that the comptroller may invest in such obligations shall not exceed thirty per centum of the assets of the New York state employees' retirement system's funds; and provided further that not more than two and one half per centum of the assets of the New York state employees' retirement system's funds shall be invested in the obligations of any one corporation of the highest classification and subsidiary or subsidiaries thereof, that not more than two per centum of the assets of the New York state employees' retirement system's funds shall be invested in the obligations of any one corporation of the second highest classification and subsidiary or subsidiaries thereof, that not more than one and one half per centum of the assets of the New York state employees' retirement system's funds shall be invested in the obligations of any one corporation of the third highest classification and subsidiary or subsidiaries thereof. He shall, however, be subject to all terms, conditions, limitations and restrictions imposed by this article and by law upon the making of such investments. The comptroller shall have full power:

1. To hold, purchase, sell, assign, transfer or dispose of any of the securities or investments, in which any of the funds of the retirement system shall be invested, including the proceeds of such investments and any monies belonging to such funds, and
2. In his name as trustee, to foreclose mortgages upon default or to take title to real property in such proceedings in lieu thereof and to lease and sell real property so acquired. R & S Sec. 13(b).

Furthermore, the comptroller is permitted to keep bank accounts to provide for current disbursement needs, but these may not exceed ten percent of the total amount of the several funds, and must be kept in a bank or trust company organized under either the laws of the State of New York or under national laws and located in the State of New York, and the bank must furnish adequate security for the moneys. R & S, Sec. 13(e).

The comptroller and all persons employed on the work of the retirement system are precluded from having certain interests in actions of the fund. The statute provides :

g. Neither the comptroller nor any person employed on the work of the retirement system shall :

1. Except as herein provided, have any interest, direct or indirect, in the gains or profits of any investment of the retirement system, nor, in connection therewith, directly or indirectly, receive any pay or emolument for his services.

2. Except as provided in section fifty of this article:

(a) Directly or indirectly, for himself or as an agent or partner of others, borrow any of its funds or deposits or in any manner use the same except to make such current and necessary payments as are authorized by the comptroller, or

(b) Become an endorser, surety or an obligor in any manner of monies loaned by or borrowed of such funds. R & S Sec. 13(g).

The comptroller may also invest the plan's funds in certain real estate, to wit:

It. The retirement system may use a part of its funds, not exceeding ten per centum of its assets, (1) for purchasing or leasing of land in the city of Albany and the construction thereon of a suitable office building or buildings for the transaction of the business of the retirement system and (2) for purchasing or leasing of land in the cities of Albany, Syracuse, Buffalo, Binghamton, New York, Rochester and Utica and the construction thereon of a suitable office building or buildings for purposes of lease or sale to the state and (3) for purchasing or leasing of land in the city of Albany on the north and south sides of Washington avenue commonly known as the "Campus Site" acquired by the state for a state buildings site pursuant to the provisions of chapter five hundred seventy-two of the laws of nineteen hundred forty-seven and the construction thereon of power plants including service connections, electric substations including service connections, garages, warehouses and restaurant facilities deemed necessary for the efficient and economical operation of the office building or buildings constructed on such land and (4) for purchasing or leasing of land in the city of Albany acquired by the state for suitable parking facilities for the use primarily of employees of the state and persons having business with state departments and state agencies and the construction thereon of such structures, appurtenances and facilities deemed necessary for the efficient and economical operation of the parking facilities constructed on such land and (5) for purchasing or leasing of land in locations approved by the state university trustees and the construction, acquisition, reconstruction, rehabilitation or improvement of suitable buildings or facilities thereon for purposes of lease or sale to the state university construction fund, such buildings or facilities to be used by the state university or by state-operated institutions or statutory or contract colleges under the jurisdiction of the state university or by the students, faculty and staff of the state university or of any such state-operated institution or statutory or contract college, and their families and (6) for purchasing of lands from the New York state thruway authority and the construction thereon of an office building or other buildings for purposes of lease or sale to the thruway authority for its own use under such terms and conditions, including consideration and length of term, as shall be agreed upon between the retirement system and the thruway authority.

The retirement system from time to time may lease to any public agency any portion of a building constructed for the transaction of its business which may not be required for such purpose, upon such terms and conditions as shall be deemed to be for the best interest of the retirement system.

Real property of the retirement system acquired or constructed pursuant to this subdivision shall be exempt from taxation.

i. At the close of each fiscal year, the average rate of investment earnings of the retirement system shall be computed by the actuary and certified to the comptroller. This rate shall be determined from the investment earnings during the calendar year which ended three months prior to the close of the fiscal year. For any year that such average rate of earnings is in excess of three per centum but not in excess of four per centum, the comptroller shall declare a rate of special interest, for members earning regular interest of three per centum, equal to the difference between such average rate of earnings and three per centum, expressed to the lower one-tenth of one per centum, but not in excess of one per centum. For any year, commencing with the fiscal year the first day of which is April first, nineteen hundred seventy, that such average rate of earnings is in excess of four per centum, the special rate of interest for members earning regular interest of three per centum shall be equal to the difference between such average rate of earnings and three per centum expressed to the lower one-tenth of one per centum, but not in excess of two per centum, and for members earning regular interest of four per centum, it shall be the difference between such average rate of earnings and four per centum, expressed to the lower one-

tenth of one per centum, but not in excess of one per centum. Special interest at such rates, shall be credited by the comptroller at the same time that regular interest is credited, to the individual annuity savings accounts of persons who are members as of the close of the fiscal year. Special interest shall not be considered in determining rates of contribution of members. In the case of persons who last became members on or after July first, nineteen hundred seventy-three, the provisions of this subdivision shall apply only to the fiscal years beginning April first, nineteen hundred seventy-two and ending March thirty-first nineteen hundred seventy-three.

j. The retirement system may invest, within the limitations authorized for investments in conventional mortgages, a part of its funds in first mortgages on real property located anywhere within the boundaries of the United States and leased to the government of the United States, provided however, that no such investment shall be made unless the terms of the mortgage shall provide for amortization payments in an amount sufficient to completely amortize the loan within the period of the lease.

k. The funds of the retirement system may be invested in the purchase of promissory notes or bonds from the farmers home administration issued in connection with the purchase or improvement of real property and which are insured by the farmers home administration. R & S Sec. 13(h), (i), (j), and (k).

It has been ruled that the investment of pension plan funds in savings accounts is not authorized by the law. Ops. Atty. Gen. May 9, 1963. However, the funds of the pension plans may be invested in mortgage loans in conjunction with a savings bank. Ops. Atty. Gen. No. 17 (1961).

Criminal penalties exist for protection of the plan in certain instances. Any individual who either "1. Knowingly make any false statement, or 2. Falsify or permit to be falsified any record of the retirement system" may be found guilty of a misdemeanor if such falsification was in attempt to defraud the system. R & S, Sec. 111. If an individual is given too much or too little in benefits, the comptroller is authorized to adjust payments "in such a manner that the actuarial equivalent of any benefit rightly due shall be paid." R & S, Sec. 111(b). This permits the comptroller to reduce benefits if an employee wrongfully given too great a benefit refuses to return them.

### *B. The State Teachers' Retirement System*

Generally, the New York State Teachers' Retirement System (State Teachers' Plan) is corporate in form, much like the State Employees' Plan. Responsibilities for administration of the corporate affairs are vested in the principal corporate body, the State Teachers' Retirement Board (Board). Education Law, Secs. 504, 505 (hereinafter, EL). The plan covers both employees of the State and the local schools, as will be discussed under subheading B (1).

#### *1. Coverage*

The State Teachers' Plan covers both teachers in the State and local school systems, except for those of municipalities with a population of one-million or more individuals. EL, Sec. 526(1). Pre-existing local retirement systems have been dissolved and their funds transferred to the State Teachers' Plan system. EL, Sec. 526. However, a school board may still enact a supplemental system for teachers whom it employed and this may be enforced. *Herreboudt v. Board of Education*, 41 Misc. 2d 547, 245 N.Y.S. 2d 612 (Sup. Ct. 1964).

Unless specifically excluded because of either membership in a local pension system or election to participate in the State Universities

Optional Program (to be discussed, *infra.*) all State and local teachers may be covered by the State Teachers' Plan. The statute provides that:

1. The membership of the retirement system shall consist of the following:  
a. All teachers who were teachers on or before the first day of August, nineteen hundred twenty-one, who shall file with the retirement board applications for membership, except those specifically excluded under subdivision four of this section.

b. All teachers who were not teachers on or before the first day of August, nineteen hundred twenty-one, except those specifically excluded under subdivision four of this section.

2. The retirement board may, in its discretion, deny the right to become members to any class of teachers whose compensation is only partly paid by the employer or who are serving on a temporary or any other than a *per annum* basis, and it may also, in its discretion, make optional with members in any such class their individual entrance into membership.

3. The membership of any person in the retirement system shall cease if his service amounts to less than five years in any period of ten consecutive years, except as provided in section five hundred twelve-a of this article, or upon the withdrawal by a contributor of his accumulated deductions as provided in this article, or upon retirement on a pension, or at death, except that the membership of a teacher, who has not withdrawn his contributions and who has not had sufficient service to be eligible for disability retirement, shall not be cancelled, provided the member shall prove to the satisfaction of the retirement board that absence from service was caused by personal illness constituting disability.

4. Teachers who are members or who become members of a local district pension system maintained under the laws of the state from appropriations or contributions made wholly or partly by an employer or teachers who elect the optional retirement program established either by article eight-b or by article three, part V of this chapter shall be excluded from membership in this retirement system.

5. A retired teacher receiving a retirement allowance for other than disability may return to active service. Any such retired teacher returning to active service shall immediately notify the retirement board of his intention. Except as otherwise provided in sections two hundred eleven and two hundred twelve of the retirement and social security law and section one hundred fifty of the civil service law, his retirement allowance shall be suspended during the time he is in active service. If such teacher has not elected an optional benefit, the payments of his annuity so suspended shall be held in the annuity reserve fund at regular interest, and upon the resumption of his retirement allowance after again leaving the active service such accumulated amounts shall be applied to increase the annuity otherwise payable to him or in the event of his death while in active service such accumulated amounts shall be paid to his estate or to such person as last designated as the beneficiary of his accumulated contributions. If such teacher has elected an optional benefit and dies while in active service, the optional benefit in respect to his annuity shall be payable as if no annuity payments had been suspended, but the optional benefit in respect of his pension shall not be payable in excess of the proportion that the cost of such optional pension, when measured by the difference between his pension without optional modification and the optional pension, is currently covered by the amount of the annuity payments suspended while he is in active service, which difference shall be paid during the period of his active service from the annuity reserve fund to the fund from which his pension was payable. If, however, such full cost of the optional pension is greater than the suspended annuity payments, the teacher may elect upon returning to active service to pay the amount of such difference directly to the retirement system to be credited to the fund from which his pension was payable, and subject to such payments monthly in advance, or at such other intervals as may be agreed upon with the retirement board, the optional benefit in respect of the pension shall be payable in the event the teacher dies while in active service, as if no pension payments had been suspended. If the suspended annuity payments are greater than such full cost of the optional pension, the amount of such difference shall be held at regular interest in the annuity reserve fund, and upon the resumption of his retirement allowance after again leaving active service such accumulated amounts shall be applied to increase the annuity otherwise payable to him, or in the event of his death while in active service such accumulated amounts shall be paid to his estate or to the beneficiary nominated under the option. EL Sec. 503 (1)-(5).

## 2. Funding

The New York State Teachers' Retirement System became noncontributory on July 1, 1968. EL, Sec. 533. The funding is similar to that of the State Employees' Plan.

The participating employer contributes normal, deficiency and administrative contributions. They are actuarially computed. EL, Sec. 517(2)(a). The rate of contribution is periodically evaluated on the basis of interest and mortality tables, determining the percentage contribution of employee salaries which, contributed at a constant annual rate, will provide payment at death and retirement benefits. EL, Sec. 517(1)(b). The deficiency contribution is computed at 4 percent of the liabilities not funded by the normal contributions. EL, Sec. 517(c). The deficiency contributions are discontinued when the accumulated reserve is actuarially sufficient to meet future liabilities with addition of only normal costs. EL, Sec. 517(e).

The administrative contribution is the amount needed to defray expenses of the plan year anticipated one year in advance. EL, Sec. 519.

It has been held that while the statute does not contemplate a mandatory refund of excess deficiency contributions to the employer involved, it presumes that if such refund is not made it will be taken as a set-off against normal contributions which would otherwise required. *Central School District v. New York State Teachers' Retirement System*, 23 N.Y. 2d 213, 296 N.Y.S. 2d 289, 244 N.E. 2d 1 (Ct. App. 1969). That case also noted that the amount of normal contributions is predicated upon the liabilities which must be financed by the normal contributions. Therefore, where the liabilities are reduced by excess deficiency contributions, the normal contribution level may be reduced.

While employees under the State Teachers' Plan need not make contributions, they are permitted to make contributions toward funding the plan in order to receive increased pensions. EL, Sec. 533(e). Such voluntary payments are made to the annuity savings fund or the fund for special service retirement. EL, Secs. 516, 511-a.

## 3. Financing

The contributions required of the participating employer are couched in mandatory language, and therefore are compellable by article 78 proceeding. See discussion of article 78 proceeding, *supra*. The statute states that:

on account of each teacher who is a member of the retirement system there shall be paid annually into the pension fund . . . EL, Sec. 517(a).

Therefore, it would appear that an employee could enforce his or her right to have contributions made and to receive benefits when eligible by means of an article 78 proceeding.

## 4. Fiduciary standards

Although the retirement board is the administrative head of the State Teachers' Plan, the custodian of the retirement funds is the head of the division of the treasury in the department of taxation and finance. EL, Sec. 507(3). The head of the division of finance and any individual authorized to perform the functions of duties vested in him or her are required to give a "separate and additional bond in such amount as may be fixed from time to time by the governor for the faith-

ful performance of the duties of such head of the division." EL, Sec. 507(4). The custodian is also required to furnish an annual sworn statement to the Board on the amount of funds in his custody belonging to the system. EL, Sec. 507(5).

The 1975 Legislature has enacted a provision indemnifying the Board members from loss due to legal actions. It states that :

7.a. The system shall save harmless and indemnify all members of the retirement board, officers and employees of the system from financial loss arising out of any claim, demand, suit or judgment by reason of alleged negligence or other act by such board member, officer or employee provided that such board member, officer or employee at the time of such alleged negligence or act was acting in the discharge of his duties and within the scope of his employment and that such damages did not result from willful and wrongful act or gross negligence of such board member, officer or employee and provided further that such board member, officer or employee shall, within five days of the time he is served with any summons, complaint, process, notice, demand or pleading, deliver the original or a copy thereof to the system's legal advisor.

b. Upon such delivery the system's legal advisor may assume control of the representation of such board member, officer or employee. Such board member, officer or employee shall cooperate fully with the system's legal advisor's defense.

c. This section shall not in any way impair, limit or modify the rights and obligations of any insurer under any policy of insurance.

d. The benefits of this section shall inure only to board members, officers and employees of the system and shall not enlarge or diminish the rights of any other party. L. 1975, subd. 7, c. 770, sec. 1.

The validity of this provision has not yet been tested in any reported decisions.

The statutes also place strict limitations on the investment authority of the Board. Serving as trustees of the plan's funds, the Board may invest only in those investments permitted under the statute.

The authorizing statute states:

1. The members of the retirement board shall be the trustees of the several funds created by this article, and shall determine from time to time what part of the moneys belonging to the retirement system shall be invested. When such board shall determine upon the investment of any moneys or upon the conversion or sale of any securities, it shall, by resolution duly adopted by a majority vote of the members of the board, direct the custodian to so invest the moneys or convert or sell the securities. Investments shall be made only in securities in which the trustees of a savings bank may invest the moneys deposited therein as provided by law. It shall be the duty of the custodian to collect the interest thereon as the same becomes due and payable and also the principal thereof and place the same when so collected to the credit of the retirement system. EL Sec. 508(1).

The reference to "securities in which the trustees of a savings bank may invest the moneys deposited therein . . ." refers to the limitation found in New York Banking Law, Sec. 235. This limitation permits investment by the Board only in delineated assets. Due to the length of the provisions of Banking L. Sec. 235, it will not be delineated herein, but is contained in Appendix A.

Members of the Retirement Board are also precluded from having individual, personal interest in the investments of the Board. The law states:

3. Except as herein provided, no member nor employee of the retirement board shall have any interest direct or indirect in the gains or profits of any investment made by the board nor as such directly or indirectly receive any pay or emolument for his services. And no member nor employee of the said board directly or indirectly, for himself or as an agent or partner of others, nor a corporation of which he is an officer, stockholder or member, shall borrow any of its funds or deposits or in any manner use the same except to make such current and necessary

payments as are authorized by the board; nor shall any member or employee of said board become an endorser or surety or become in any manner an obligor for moneys loaned by or borrowed of the board. Nothing herein contained shall be construed to prevent a member or an employee of the retirement board, who is also a member of the retirement system, from borrowing from his accumulated contributions in the retirement system in accordance with section five hundred twelve-b of this article. EL, Sec. 508(4).

Actuarial reports are required at least "once each quinennial period," showing the valuation of the present and prospective assets and liabilities of the various funds of the State Teachers' Plan. EL, Sec. 508(5).

The records of the Retirement Board are open to public inspection, and the Board publishes annual reports showing the condition of the various funds under its control. EL Sec. 508(6), (7). Furthermore, an amount, not exceeding ten percent of the funds of the retirement system, may be used for construction of buildings for its offices in Albany, and for purchasing or leasing land in Albany, Binghamton, New York, Rockhester and Utica for office buildings, as well as purchase or lease of land to build or rehabilitate buildings to be leased to the state university or contract colleges. EL, Sec. 508(8). The board may also invest its moneys in:

first mortgages on real property located anywhere within the boundaries of the United States and leased to the government of the United States, provided however, that no such investment shall be made unless the terms of the mortgage shall provide for amortization payments in an amount sufficient to completely amortize the loan within the period of the lease.

11. The funds of the retirement system may be invested in the purchase of promissory notes or bonds from the farmers home administration issued in connection with the purchase or improvement of real property and which are insured by the farmers home administration. EL, Sec. 408(10), (11).

### *5. State University and Community College Employees' Optional Program*

An optional program exists for employees of the State University and of certain electing community colleges. EL, Secs. 390 *et seq.* Eligible employees of the Optional Program are defined by statute to include:

those employees in positions requiring the performance of educational functions in teacher education, agriculture, home economics, forestry, ceramics, liberal and applied arts and sciences, engineering, technical skills, crafts, business education, labor and industrial relations, medicine, dentistry, veterinary medicine, pharmacy, nursing, law, public affairs, maritime officer training, academic administration, library service, student activities, student personnel service and other professions required to carry on the work of the state university and the colleges, schools, institutes, research centers, facilities and institutions comprising it and of the community colleges. Such positions in the state university, including those at the state colleges of agriculture, home economics, veterinary medicine or industrial and labor relations, the state agricultural experiment station at Geneva, or any other institution or agency under the management and control of Cornell university as representative of the board, and at the state college of ceramics under the management and control of Alfred university as the representative of the board, and such positions in the community colleges shall be those certified to the board by the chancellor of state university as requiring the performance of such functions. No person receiving a benefit by reason of his retirement from any retirement or pension system of New York state or any political subdivision thereof shall be eligible to elect the optional retirement program. EL, Sec. 390(3).

Like the other retirement plans in the State of New York, this one is noncontributory after 1968. R & S See. 75-b.

### *C. The New York Policemen's and Firemen's Retirement System*

The newest of the State retirement systems is the New York Policemen's and Firemen's Retirement System (State Police and Firemen's Plan), enacted in 1966. L. 1966, ch. 1000. It covers both employees of the State and local governmental fire and police systems, as will be discussed *infra*.

#### *1. Coverage*

Participation in the State Police and Firemen's Plan is mandatory for two categories of police and firepersons:

1. Policemen and firemen now employed or hereafter appointed by an employer.

2. Policemen and firemen now employed or hereafter appointed by a participating employer in a position in the classified civil service, other than in a position in the exempt class, and who is not eligible to become a member of a local pension system. The employers of such policemen and firemen shall pay into the pension accumulation fund the amount required to pay the accrued liability. . . . R & S, Sec. 340(b).

Participation is not mandatory, but is permitted, for three more categories of employees:

1. Policemen and firemen in the service of a public or quasi-public organization if their employer has elected to participate as provided in section three hundred thirty-one.

2. Officers and employees of the federal government who have at least five years of member service credit at the time they become federal officers or employees may continue as contributing members. . . .

3. Notwithstanding any inconsistent provision of subdivision e of this section, or of this chapter or of any other law, an officer or employee in the service of the state or of a participating employer who, at the time of entering such service, was or is entitled to benefits by any other pension or retirement system maintained by the state or a political subdivision thereof, provided such benefits, exclusive of any annuity based solely on his own contributions and interest thereof, are suspended during his active membership in the policemen's and firemen's retirement system. . . . R & S, Sec. 340(c).

Every municipality employing police and firepersons, except those maintaining local pension plans for all their police and firepersons, must participate in the State Police and Firemen's Plan. The participation is irrevocable. R & S, Sec. 330(a). The municipalities not required to participate in the State Police and Firemen's Plan may elect to do so by adoption of a resolution by the municipality's legislative body. R & S, Sec. 330(b). This resolution, too, is irrevocable.

Public and quasi-public entities which are not municipalities but which were members of the State Employees' Plan and which employ police or firepersons must join the State Police and Firemen's Plan after April 1, 1967. R & S, Sec. 331(a).

#### *2. Funding*

As noted in discussions of the State Employees' Plan and the State Teachers' Plan, New York pension plans are noncontributory. This includes the Police and Firemen's Plan. R & S, Sec. 75-b.

The employer contributions are made to the pension accumulation fund, and include normal, deficiency, and administration contributions. R & S Sec. 323(b). The statute defines the three terms

1. Normal contribution. The rate of such contribution shall be applied to the members' annual compensation as of the end of the fiscal year. Such rate shall be a uniform and constant rate per centum of annual compensation. When ap-

plied to the compensation of the average new entrant during the remaining period of his membership, such rate shall be computed to be sufficient to provide all the benefits, other than those on account of prior service, granted by this article and which are payable from funds contributed to the pension accumulation fund. Such rate shall be computed each year by means of an actuarial valuation as prescribed in section three hundred eleven of this chapter.

**2. Deficiency contribution.**

(a) In the case of employers who were participating in the state employees' retirement system on March thirty-first, nineteen hundred sixty-seven, the rate of such contribution shall continue to be the rate determined for such participating employer pursuant to law. Such rate may be varied, however, if an adjustment is necessitated by reason of the allowance of additional prior service credits.

(b) In the case of an employer who elects to participate in the policemen's and firemen's retirement system on or after April first, nineteen hundred sixty-seven, an initial actuarial valuation shall be made to determine the accrued liability of such employer by reason of the prior service of those of its employees who are members of the retirement system. The rate of deficiency contribution for such employer shall then be determined. Such rate shall be that proportion of the total annual compensation of such employees as is equivalent to four percentum of such accrued liability. Such rate shall be applied to the employer's payroll of members, as used in the annual valuation. The cost of making such initial valuation shall be assessed against and paid by such employer.

(c) The amount of each annual deficiency contribution payable by every employer shall be at least three per centum greater than the amount for the preceding year.

(d) The comptroller shall approve the discontinuance of the state's deficiency contribution on account of members employed by it when:

(1) The total amount in the pension accumulation fund on account of all members, and

(2) The present value of future deficiency contributions still to be paid by other employers, and

(3) The present value of future normal contributions, on the basis of the rate of normal contribution then in effect, shall equal the then present value of the total liability of such fund on the basis of the tables then in use.

(e) Unless previously discontinued, or unless hereafter discontinued pursuant to other provisions of law, the deficiency contribution of a participating employer shall be discontinued when the total amount of deficiency contributions paid by such employer at least equals or shall hereafter equal such percentum of its initial accrued liability computed by the actuary as shall equal that percentum of the state's initial accrued liability paid by deficiency contributions during the period equal to the period last determined by the actuary as the deficiency payment period. Nothing herein contained shall be deemed to give any participating employer any valid claim or cause of action for refund or credit for any sum or sums paid or to be paid for fiscal years prior to and including the fiscal year ending March thirty-first, nineteen hundred sixty-six nor to excuse any participating employer from the payment of any contributions for such fiscal years.

**3. Administration contribution.**

(a) The expenses of the retirement system, including an amount allocated to amortize over a period of thirty years, with interest, the cost of construction of the retirement system building, and the cost of maintenance of such building, for each fiscal year shall be determined at the close of each such year. The ratio of such expenses to the total compensation of all members, as used in the actuarial valuation, shall be the rate of such administration contribution. Such rate shall be applied to each employer's payroll of members, as used in the annual valuation.

(b) All such expenses shall be paid out of the pension accumulation fund which shall be reimbursed through administration contributions and other monies received from employers pursuant to this article. R & S, Section 323(1), (2), (3).

**3. Financing**

Like the State Employees' Plan and the State Teachers' Plan, the New York State Policemen's and Firemen's Retirement System contributions are couched in terms which would support a writ of mandamus or article 78 proceeding.

#### *4. Fiduciary standards*

The comptroller is the administrative head of the State Police and Firemen's Plan. He is required to keep necessary accounting records and actuarial data, R & S, Sec. 311(a). Furthermore, he must hire an actuary to make the computations required to set up tables of mortality and contributions. There must be re-evaluation of the actuarial computations and assumptions at least once every five years. R & S Sec. 311(b).

The comptroller manages the investments of the plan's funds. He or she may invest in:

\* \* \* securities in which he is authorized by law to invest the funds of the state, except that he may invest in obligations consisting of notes, bonds, debentures or equipment trust certificates issued under an indenture, which are the direct obligations of, or in the case of equipment trust certificates are secured by direct obligations of a railroad or industrial corporation, or a corporation engaged directly and primarily in the production, transportation, distribution, or sale of electricity, or gas, or the operation of telephone or telegraph systems or waterworks, or in some combination of them: provided the obligor corporation is one which is incorporated under the laws of the United States, or any state thereof, or of the District of Columbia, and said obligations shall be rated at the time of purchase within the three highest classifications established by at least two standard rating services. The maximum amount that the comptroller may invest in such obligations shall not exceed thirty per centum of the assets of the New York state policemen's and firemen's retirement system's funds; and provided further that not more than two and one-half per centum of the assets of the New York state policemen's and firemen's retirement system's funds shall be invested in the obligations of any one corporation of the highest classification and subsidiary or subsidiaries thereof, that not more than two per centum of the assets of the New York state policemen's and firemen's retirement system's funds shall be invested in the obligations of any one corporation of the second highest classification and subsidiary or subsidiaries thereof, that not more than one and one-half per centum of the assets of the New York state policemen's and firemen's retirement system's funds shall be invested in the obligations of any one corporation of the third highest classification and subsidiary or subsidiaries thereof. He shall, however, be subject to all terms, conditions, limitations and restrictions imposed by this article and by law upon the making of such investments. R & S Sec. 313.

There is also a prohibition against the comptroller or persons employed by the Policemen's and Firemen's Plan having any:

\* \* \* interest, direct or indirect, in the gains or profits of any investment of the policemen's and firemen's retirement system, [or] in connection therewith directly or indirectly, receive any pay or emolument for his services. R & S Sec. 313.

Similarly, the comptroller and the employees of the Policemen's and Firemen's Plan may not, except as otherwise provided,

- (a) Directly or indirectly, for himself or as an agent or partner of others, borrow any of its funds or deposits or in any manner use the same except to make such current and necessary payments as are authorized by the comptroller, or
- (b) Become an endorser, surety, or an obligor in any manner of monies loaned by or borrowed of such funds. R & S Sec. 313.

Up to ten percent of the assets of the funds may be used for the purchase or lease of suitable office buildings, or for purchase or lease of certain land and buildings for power plants, parking lots, and certain enumerated purposes. R & S Sec. 313(h).

#### *D. Supplemental benefit plans*

The State of New York has organized a number of supplemental benefit plans for its employees. Under these plans members may contribute towards higher pensions than otherwise available under the three discussed plans. The most significant of these plans are those for the State's judges and legislators, although there is a large plan

dealing with State and local firepersons and police. These plans are governed in general by the Supplemental Pensions Act, R & S, Secs. 160-173.

The legislative plan, for example, permits a member of the New York legislature to make contributions under the plan and receive upon retirement, after at least 20 years in the legislature, an allowance consisting of an annuity and two pensions. One pension is the actuarial equivalent of the reserve-for-increased-take-home-pay which the member has accrued, and the other is one-quarter of his final average salary. R & S, Sec. 80(d). If the member elects, he or she may make further contributions and receive a pension equal to one-half of the final average salary instead. R & S, Sec. 80(c).

Another of the supplemental pension plans is that for the correctional uniformed personnel of the State of New York. These employees would otherwise be covered by the State Employees' Plan alone, but they may get this supplement. Those individuals entering service after 1965 may make contributions and receive at retirement, after 25 years of service or upon reaching age 60, a total pension plus supplement equal to but not greater than one-half of his or her final average salary.

#### *E. Conclusions regarding State governmental pension and retirement plans*

Generally, the State laws present a policy to cover all State employees and local employees other than those of the City of New York, under State-operated pension and retirement systems. These plans are financed through guaranteed contributions of the State or local participating employer. These contributions should be enforceable by a so-called article 78 proceeding (formerly writ of mandamus). They are protected from diminution by Article V, Section 7 of the New York State Constitution.

The fiduciary standards of the three plans appear similar. There is a trustee of the plans' funds who is responsible for investing and protecting the funds. The State may not compel the trustee to invest in any specific asset, but it may designate the class of assets within which investment is possible. See *Scaglione, supra.*, and *Westchester, supra.* Furthermore, trustees are generally precluded from having or obtaining an interest in the investments of the funds but, in at least one case it has been stated that any other conflict of interest may not be protected by general fiduciary rules of conduct and propriety. See *Westchester, supra.*

#### IV. THE PENSION PLANS OF THE CITY OF NEW YORK: THE NEW YORK CITY EMPLOYEES' PENSION PLANS, THE NEW YORK CITY POLICE PENSION PLANS, THE NEW YORK CITY FIRE DEPARTMENT PENSION PLANS, THE NEW YORK CITY TEACHERS' RETIREMENT SYSTEM, THE NEW YORK CITY BOARD OF EDUCATION RETIREMENT SYSTEM, AND THE CLOSED FUNDS (THE NEW YORK CITY DEPARTMENT OF STREET-CLEANING RELIEF AND PENSION FUND, THE NEW YORK CITY DEPARTMENT OF HEALTH PENSION FUND, THE BMT SYSTEM PENSION FUND, AND THE IRT SYSTEM PENSION FUND)

Unlike other municipalities in New York, the City of New York enacts special pension and retirement plans for its employees. They are not covered by the pension and retirement plans of the State of New York. Within the City system of plans are five major retirement plans

and two closed plans: the New York City Employees' Pension Plans (City Employees' Plan), the New York City Police Pension Plans (City Police Plan), the New York City Fire Department Pension Plans (City Firepersons Plan), the New York City Teachers' Retirement System (City Teachers' Plan), the New York City Board of Education Retirement Plan (Board of Education Plan), and two closed plans, the New York City Department of Street-Cleaning Relief and Pension Fund and the New York City Department of Health Pension Fund. Each will be discussed individually in the same format as the State plans, except the closed plans will be discussed summarily.

#### *A. State law applicable to the New York City retirement and pension plans*

While the New York City Administrative Code contains the major portions of governing law relating to the City's pension and retirement systems, certain State laws also apply. Perhaps foremost among these is Article V, Section 7 of the New York State Constitution.

Article V, Section 7 protects the benefits of pension trust beneficiaries by making their right to such benefits contractual. See *supra*, pp. 134-136. The provision is expressed in terms of application to "the State or a civil division thereof." Therefore, the rules applicable to this Constitutional provision would apply to the City's plans as well as those of the State.

The City's pension and retirement plans would also be governed by Article 8, Section 1 of the New York State Constitution, which prohibits the loan or pledge of moneys of the funds to or for an individual's benefit. That provision is also applicable to the City, since it is couched in terms of "county, city, town, village, or school district" applicability.

The New York State Legislature has also enacted a restriction on investment authority of the New York City pension and retirement funds. Article 4-A of the Retirement and Social Security Law, Investments of Public Pension Funds, applies to both the State and local pension and retirement plans. The statute expresses its application as to:

any public retirement system or pension fund which grants retirement or pension benefits to employees of the city of New York, employees of the state of New York, employees of any department or agency of the city of New York or the State of New York, and employees of any municipality or other participating employer participating in the New York State employees' retirement system or the New York state policemen's and firemen's retirement system. R & S Sec. 176.

The statute provides that, in addition to other powers expressly granted in the New York City Administrative Code, the trustee or trustees of the public retirement funds may invest such moneys in securities which trustees of savings banks (see Appendix A) may invest in, but subject to certain limitations:

(a) (i) Except as provided in sections one hundred seventy-eight and three hundred six of the public housing law, no conventional mortgage may exceed sixty per centum of the appraised value of improved and unencumbered real property or seventy-five per centum of the appraised value thereof if such real property is improved by a building or buildings, the major portion of which is used, or in the case of a building under construction is to be used, for residential, business, manufacturing or agricultural purposes: (ii) the aggregate unpaid principal amount of all conventional mortgages at any time held in a fund shall not exceed twenty-five per centum of the assets of such fund; and

(iii) not more than five per centum of the assets of any fund shall be invested in any one conventional mortgage;

(b) the aggregate unpaid principal amount of obligations issued or guaranteed by the international bank for reconstruction and development at any time held in a fund shall not exceed five per centum of the assets of such fund;

(c) the aggregate unpaid principal amount of all obligations of the Dominion of Canada, of any province of the Dominion of Canada, and of any City of the Dominion of Canada at any time held in a fund shall not exceed five per centum of the assets of such fund;

(d) the aggregate unpaid principal amount of equipment trust certificates at any time held in a fund shall not exceed five per centum of the assets of such fund; and

(e) not more than two and one-half per centum of the assets of any fund shall be invested in the obligations of any one railroad or industrial corporation, or any one corporation engaged directly and primarily in the production, transportation, distribution, or sale of electricity or gas, or the operations of telephone and telegraph systems or water works, or in some combination thereof; and

(f) not more than thirty per centum of the assets of any fund shall be invested in bonds of electric and gas corporations as defined in subdivision thirteen of section two hundred thirty-five of the banking law, notwithstanding the provisions of paragraph (h) of such subdivision.

2. Such securities in which the trustees of a savings bank may invest the moneys deposited therein pursuant to paragraphs (a), (b), (c), (d), (e), and (f), of subdivision twenty-six of section two hundred thirty-five of the banking law and interest-bearing obligations payable in United States funds which are convertible into securities eligible for investment pursuant to this subdivision two, provided, for the purposes of this subdivision two, with reference to such paragraphs (c) and (d), that the owners of such securities shall have received dividends, thereon in each year for a period of five fiscal years immediately preceding the date of investment by the trustee or trustees of a fund and, with reference to such paragraph (c), that aggregate net corporate earnings available for dividends for such period shall have been at least equal to the amount of such dividends, and common stock of a bank, trust company or national bank having its principal office in any state of the United States, District of Columbia and Commonwealth of Puerto Rico, other than the state of New York, provided (i) such bank, trust company or national bank shall have paid cash dividends on its common stock in each year for a period of five fiscal years next preceding the date of investment by the trustee or trustees of a fund and aggregate net earnings available for dividends on the common stock for the whole of such period shall have been at least equal to the amount of such dividends paid; (ii) the bank, trust company or national bank have capital stock and surplus of at least twenty million dollars, and further provided (iii) the maximum amount invested by any fund in such securities shall not exceed (a) in any one year six per centum of the assets of such fund, or (b) thirty per centum in the aggregate; provided, further, however, that more than six per centum of such assets, but not more than eight per centum thereof, may be so invested in any one year but only to the extent that the per centum of such investments over all prior years from the effective date of this act when added to the per centum of such investments during that year does not exceed an average of six percentum of the assets of such fund over all prior years and the year in which the investment is being made; (iv) not more than one per centum of the assets of any fund shall be invested in the equity securities of any one corporation and subsidiary or subsidiaries thereof; and (v) not more than three per centum of the total issued and outstanding equity securities of any one corporation shall be owned by any fund.

3. Conventional mortgages guaranteed by a state bank or trust company having a net worth in excess of five hundred million dollars, provided, however, that not more than ten per centum of the assets of any fund shall be invested in any such mortgage so guaranteed.

4. Bonds and notes of any bank, trust company, savings bank or savings and loan association organized under the laws of this state having a net worth of at least ten million dollars, which bonds and notes shall be validly secured at all times to the extent of one hundred and ten per centum of the unpaid principal amount of such bonds and notes by mortgages upon real estate insured by the federal housing administrator or any of his successors in office and guaranteed by the United States under the provisions of the national housing act, as

amended or supplemented, and to the extent of one hundred and thirty-three and one-third per centum of the unpaid principal amount of such bonds and notes by conventional mortgages, the valuation of which mortgages shall be based upon the unpaid principal amount thereof upon the date of the pledge, assignment or transfer thereof to such fund or its trustee or trustees as security for such bonds and notes, such bonds or notes to be amortized in substantially equal annual or semiannual payments of principal and interest over a period not in excess of twenty-five years, provided the aggregate unpaid principal amount of bonds and notes secured by conventional mortgages shall not exceed five per centum of the assets of such fund.

5. Any whole or part interest in any conventional mortgage or insured mortgage with any other fund, an insurance company licensed to do business in the state, a savings bank, a bank or trust company, savings and loan association, a national bank having its principal office in this state, a federal savings and loan association having its principal office in this state, a trust company or other corporation all of the capital stock of which is owned by not less than twenty savings banks, the New York Business Development Corporation, and an employee welfare fund as defined in section sixty-one of the banking law, or in any whole or part interest in any such mortgage, which mortgage is held for the benefit of the holder or holders of a whole interest or part interests therein by any of the foregoing entities, but no such investment shall be made in any part interest which is junior or subordinate to any other part interest therein nor if the aggregate amount of all investments by the fund in whole and part interests in such mortgages when added together will exceed the limitations set forth in the foregoing subdivisions of this section applicable to investments in such mortgages.

6. Real estate only if acquired or used for one or more of the following purposes and in the following manner:

- (a) The land and the building thereon in which it has its principal office.
- (b) Such as shall be requisite for its convenient accommodation in the transaction of its business.
- (c) Such as shall have been acquired in satisfaction of loans, mortgages, liens, judgments, decrees or other debts previously owing to such fund in the course of its business.
- (d) Such as shall have been acquired in part payment of the consideration on the sale of real property owned by it, if each such transaction shall have effected a net reduction in the fund's investment in real property.

(e) Such real property, other than property to be used primarily for agricultural, horticultural, ranch, mining, recreational, amusement or club purposes, as may be acquired, as an investment for the production of income, or as may be acquired to be improved or developed for such investment purpose pursuant to an existing program therefor, subject to the following conditions and limitations: (1) the cost of each parcel of real property so acquired under the authority of this subdivision, including the estimated cost to the fund of the improvement or development thereof, when added to the book value of all other real property then held by it pursuant to this subdivision, shall not exceed five per cent of its admitted assets as of the thirty-first day of December next preceding, and (2) the cost of each parcel of real property acquired under the authority of this subdivision, including the estimated cost to the fund of the improvement or development thereof, shall not exceed as of the thirty-first day of December next preceding, two per cent of the fund's admitted assets. Each parcel of real property held by a fund under this subdivision shall (1) be valued on its books as of the thirty-first day of December of each year at an amount that will include a write-down of the cost of such property, excluding all land costs but including all improvement or development costs, at a rate that will average not less than two per cent per annum of such cost for each year or part thereof that the property has been so held, and (2) if, as of the thirty-first day of December in any year, the aggregate net income before depreciation from all the properties held by a fund under this subdivision, less the sum of all previous write-downs applied with respect to such properties, shall exceed five per cent per annum on the total book value of all such properties for the entire period during which such properties have been so held, the amount of such excess shall be applied, in such amounts and to such properties as the fund shall determine, as a further write-down of such total book value. R & S. Sec. 177

Furthermore, under the Investments Law of the State, trusts of the pension plans of the City of New York may invest a portion of

their assets in first mortgages located in the United States. R & S, See. 177-a. They may not invest in insured mortgages or conventional mortgages of unpaid principal amount less than two hundred fifty thousand dollars, but the limitation does not apply to mortgages pledged or assigned to the fund as collateral security for unpaid notes purchased from a bank. R & S, See. 178.

In an Extraordinary Session of the State Legislature, the New York City Financial Emergency Act was passed, including a provision ordering the trustees of the various New York City pension and retirement plans to purchase Municipal Assistance Corporation bonds. L. 1975, ch. 868, 870 (Sept. 9, 1975). This was struck down as violative of Article V, Section 7 of the State Constitution. See *Scaglione v. Levitt, supra*.

Elsewhere in the Financial Emergency Act, as amended by ch. 870 of the Laws of 1975, one condition for the New York State Emergency Financial Control Board's approval of the budget of the City of New York is the City's failure to increase certain expenditures. However, the provisions of the law do state that

The board may, upon the request of the city, allow (a) an increase in the expense budget (other than amounts required to pay debt service, pension costs, public assistance and care and such other amounts as the board determines to be required by law) of the city or of a covered organization for any fiscal year during the emergency period \* \* \* Ch. 870, Sec. 7, L. 1975.

This permits the Board to refuse increases in pension contributions for any year as part of the New York City budget. This would apply during the term of the Financial Assistance Act.

Furthermore, making pension contributions a priority item in the New York City budget has been discussed. See *New York Times*, December 12, 1975. This would entitle the funds to receive contributions even where other payments for services were withheld.

#### *B. New York City pension and retirement systems: General*

The Administrative Code of the City of New York governs the majority of pension and retirement systems of the City of New York. Where there is a conflict between the Code and either statutes of the State or the State Constitution, the latter will, of course, prevail. See, e.g., 44 N.Y. Jur. Sec. 128.

The pension and retirement systems are corporate in form, with governing boards and custodians of the funds. They are also interrelated by a prohibition against double membership and free transferability of benefits. See *Cantor v. Tremaine*, 161 Misc. 384, 292 N.Y.S. 725 (Sup. Ct. 1936), and Code, Sec. B 33-1.0.

The employees and officers of the boards of trustees of the various funds in the City are governed by specific provisions prohibiting conflicts of interest and certain prohibited transactions. However, the general code of ethics for City employees should also apply. Code, Secs. 1106-1.0.

There also exists a supplemental pension fund consisting of money appropriated by the City or from other sources for supplemental pensions and allowances. Code, Sec. D49-7.0. No moneys from retirement or pension plans may be used for the supplemental benefit funds. Code, Sec. D49-8.0. The custodian of the fund is the comptroller. Code, Sec. D49-7.0. Generally, if an employee has worked a requisite

number of years and has a sufficiently low pension, he or she may become eligible for a supplemental pension. Code, Sec. D49-1.0. The supplemental fund will not be discussed in depth herein.

### *C. The New York City Employees' Retirement System*

The New York City Employees' Retirement System (City Employees' Plan) was established by act of the State Legislature in 1901. It is corporate in form and conducts business in its own name. Code, Sec. B3-10.0. The trustees of the pension funds are the Board of Estimate, and the custodian of the funds is the comptroller. Code, Secs. B3-22.0; B3-24.0.

#### *1. Coverage*

The City Employees' Plan covers all persons in "City-service." This is defined to include individuals in :

service, whether appointive or elective, as an officer or employee of the city or state of New York, of any agency thereof and of any court, so far as such service is paid for by the city, or service, by any person, in any county office, paid for in whole or in part by the city, except service on or after the first day of October nineteen hundred twenty, on account of which any person is, or may be, entitled to share in the police pension fund, or in the fire department relief fund, or in the teachers' retirement system, or in the Hunter College retirement system, or in the department of street cleaning relief and pension fund (but including service as provided for in section G51-10.1 of the Code). Code, Sec. B3-1.0(3) (a).

Individuals working for certain designated public authorities are also categorized as in "City service." Code, Sec. B3-1.0(b). Included in this listing are employees of :

the Triborough bridge authority, the Henry Hudson parkway authority, the Marine parkway authority, the New York city tunnel authority, the New York city parkway authority, the New York city housing authority, the Triborough bridge and tunnel authority, the New York transit authority, the New York city housing development corporation, the New York city health and hospitals corporation, the New York city off-track betting corporation, the transit construction fund, the New York city sports authority and the New York city rehabilitation mortgage insurance corporation \* \* \* Code, Sec. B3-1.0(b).

Participation requires little besides employment in "City service." Employment must have begun after October 1, 1920, and compensation must be at least \$840 per year. Employees desiring to participate must have at least six months of service. Code, Sec. B3-3.0(1). The individual files a statement with the Board agreeing to the deductions (if required) and waiving other pension rights. Code, Sec. B3-3.0(2).

Employees who are employed in positions partly paid for by the City do not need to participate to the extent of their City service. The employee is not required to split pension coverage and may continue to contribute to the plan of his or her choice. See *Cantor v. Tremaine, supra*.

One illegally employed by the City under an invalid appointment may not participate because the employment is not considered "City service." See *Hines v. La Guardia*, 293 N.Y. 207, 56 N.E. 2d 552 (Ct. App. 1944); and *Dimowitz v. Teachers' Retirement Board*, 33 Misc. 2d 1067, 228 N.Y.S. 2d 267, rev'd on other grounds, 18 A.D. 2d 395, 239 N.Y.S. 2d 629 (Sup. Ct., A.D. 1963).

#### *2. Funding*

The New York City Employees' Retirement System is contributory. Both the City and the covered employees contribute towards the funding of the plan.

Employees participating in the plan contribute an amount actuarially computed. The contributions must be sufficient to provide accumulation of the requisite annuity at retirement date, taking into account interest which will be earned on the invested contributions. Code, Sec. B3-15.0(a)(1). The individual participant's account is credited with deductions from his or her salary, together with the accrued interest. Code, Sec. B3-15.0(c). Employees may make voluntary additional contributions of up to an additional 50 percent in order to purchase an additional annuity with higher benefits. The contributions, however, do not affect the basic annuity or basic benefit levels under the plan. The voluntary contributions may be discontinued at the participant's election. Code, Sec. B3-15.0(d).

The employer must make annual contributions both to the contingent reserve fund and to the pension fund to cover the required benefits upon retirement. The contingent reserve fund contributions are both normal contributions and deficiency contributions. Normal contributions are defined as:

the amount of the total liability for all benefits provided in this title on account of all members and beneficiaries, excluding the liability on account of future increased-take-home-pay contributions, if any, and the liability for benefits attributable to the annuity savings fund. Code, Sec. B3-17.0(b)(2)(a).

The normal contributions are actuarially computed and are at a rate obtained by:

(i) deducting from the amount of such total liability the sum of the present value of all required future deficiency contributions and the total funds on hand, excluding the amount in the annuity savings fund, but including the amount of any unpaid moneys appropriated pursuant to section B3-21.0 of this title and (ii) by dividing the remainder by one percentum of the present value of the prospective future salaries of all members, as computed on the basis of the latest mortality and service tables adopted pursuant to section B3-11.0 of this title, and on the basis of regular interest. Code, Sec. B3-17.0(b)(2)(b).

Deficiency contributions are to be an amount which amortizes the difference between accrued liability excluding liability for benefits attributable to annuity savings fund (employee contributions) on June 30, 1967, and the total funds on hand, excluding the amount in the annuity savings fund including the amount of any unpaid moneys appropriated pursuant to B-21.0. The amortization may consider an interest rate of 4 percent and must be over a period of 35 years. Code, Sec. B3-17.0(b)(2)(C).

The City makes payments into the Pension Reserve Fund in the amount of all pensions allowable by the City on account of "city-service," to the extent that they are vested and currently paying. Code, Sec. B3-18.0. When a pension is cancelled, the funds in the Pension Reserve Fund are transferred to the Contingent Reserve Fund. Code, Sec. B3-18.0.

### *3. Financing*

The contributions by the City of New York to its pension funds are expressed in mandatory terms: "The city shall contribute." Code, Sec. B3-17(b). Therefore, an Article 78 Proceeding or mandamus order should be available to enforce such contributions.

Furthermore, the Code expressly provides that:

Regular interest, charges payable, the creation and maintenance of reserves in the contingent reserve fund and the pension fund and the maintenance of an

nuity reserves, pension reserves and reserves-for-increased-take-home-pay as provided for in this title and the payment of all pensions, pensions-providing-for-increased-take-home-pay, annuities, retirement allowances, refunds, death benefits and any other benefits granted under the provisions of this title, are hereby made obligations of the city. All income, interest and dividends derived from deposits and investments authorized by this title shall be used for the payment of such obligations of the city. Upon the basis of each actuarial determination and appraisal provided for in this title, the board shall prepare pursuant to section one hundred twelve of the charter and submit to the director of the budget an itemized estimate of the amounts necessary to be appropriated by the city to the various funds to provide for payment in full during the ensuing fiscal year of all such obligations of the city accruing during the fiscal year. There shall be included annually in the budget a sum sufficient to provide for such obligations of the city. The comptroller shall pay the sums so provided into the various funds provided for by this title, subject to the provisions of subdivision b of this section. Code, Sec. B3-21.0.

This general declaration of the obligation of the City for the pension payments and the method by which the comptroller sets forth in the budget the amounts required and they are paid was somewhat modified in 1974. The new subsection (b) to Code, Sec. B3-21.0(a), provides that the comptroller credits certain income sources in *pro tanto* satisfaction of the debts to the fund, and that certain other sources of income are available for payments. The provision states that:

b. (1) As used in this subdivision, the following terms shall mean and include:

(A) "Obligations fiscal year". Any fiscal year of the city (including any such fiscal year prior to or during or after which this subdivision becomes effective) with respect to which the city incurs obligations to pay sums to the retirement system pursuant to section B3-17.0 of the code and subdivision a of this section.

(B) "Payment fiscal year". the second fiscal year of the city succeeding an obligations fiscal year, during which second fiscal year the comptroller is required to make payments in behalf of the city, as provided for by this section, on account of the city's obligations with respect to such obligations fiscal year.

(2) Subject to the provisions of paragraph four of this subdivision b, in making any payment of the sums referred to in subdivision a hereof or any part thereof into such funds during a payment fiscal year, the comptroller shall credit in favor of the city and in *pro tanto* satisfaction of such sums or part thereof:

(A) all of such income, interest and dividends derived from deposits and investments authorized by this title, which income, interests and dividends were received during the obligations fiscal year or during any prior year and which were not previously credited in favor of the city and in *pro tanto* satisfaction of (i) such sums or part thereof, or (ii) any other such obligations of the city to the retirement system; and

(B) that part of such income, interest and dividends received during the fiscal year next succeeding the obligations fiscal year which is in excess or regular interest required to be allowed to the funds of the retirement system with respect to such next succeeding fiscal year and which part was not previously so credited; and

(C) that part of such income, interest and dividends received prior to the making of such payment and during such payment fiscal year, which is in excess of regular interest required to be allowed to the funds of the retirement system with respect to such payment fiscal year and which part was not previously so credited.

(3) Subject to the provisions of paragraph five of this subdivision b, the mayor, in submitting the proposed expense budget, shall have power to set forth therein, as amounts payable from sources other than the real estate tax levy, the estimated amounts which, pursuant to the preceding provisions of this subdivision b, will be available to the comptroller, during the fiscal year for which such budget is adopted, for satisfaction of the sums or any part thereof which would otherwise be payable to the retirement system by the city pursuant to subdivision a of this section; and the expense budget, as adopted, shall include such amounts which will be available to the comptroller during

such fiscal year as amounts payable from sources other than the real estate tax levy.

(4) The provisions of paragraph two of this subdivision b, unless extended by law enacted by the legislature, shall not apply or be effective with respect to any payment fiscal year subsequent to the payment fiscal year beginning on July first, nineteen hundred seventy-four and ending on June thirtieth, nineteen hundred seventy-five.

(5) The provisions of paragraph three of this subdivision b, unless extended by law enacted by the legislature, shall not apply or be effective with respect to the submission and adoption of the expense budget of the city for any fiscal year of the city subsequent to its fiscal year beginning on July first, nineteen hundred seventy-four and ending on June thirtieth, nineteen hundred seventy-five. Code, Sec. B3-21.0(b).

#### *4. Fiduciary standards*

The State law already examined precludes certain investments by the trustees of the pension funds of the City Employees' Plan by limiting all investments to designated ones. There are, however, other limitations applicable to such trustees and such plans.

The general authority of the Board of Estimates comes from the Administrative Code, which provides that the Board:

shall be the trustees of the several funds provided for by this title, and shall have full power to invest the same, subject to the terms, conditions, limitations and restrictions imposed by law upon savings banks; and subject to like terms, conditions, limitations and restrictions, such trustees shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities or investments in which any of the funds provided for by this title shall have been invested as well as of the proceeds of such investments and of any moneys belonging to such funds. Code, Sec. B3-22.

Therefore, the savings bank restrictions discussed earlier and contained in the Appendix to this report, may be considered relevant to the limitations imposed on investments of the trustees of the City Employees' Plan.

The Board is also required to make annual reports to the City, published in the City Record. These reports must show the valuation of assets and liabilities of the funds and must be certified by the actuary. The report must also contain a statement of the accumulated cash and securities of the funds, and must be certified by the comptroller. The report should also contain any "other facts, recommendations and data as may be of value in the advancement of knowledge concerning employees' pensions and annuities." Code, Sec. B3-12.0. This report should be considered a substantial element in the protection of the plan funds from fiduciary irresponsibility or impropriety.

Employees of the Board and the trustees themselves are expressly prohibited from having:

any interest, directly or indirectly, in the gains or profits of any investment of the retirement system or as such, directly or indirectly from receiving any pay or emolument for their services. The trustees and employees of such board, directly or indirectly, for themselves or as agents or partners of others, shall not borrow any of its funds or deposits or in any manner use the same except to make such current and necessary payments as are authorized by such board: nor shall any such trustee or employee become an endorser or surety or become in any manner an obligor for moneys loaned by or borrowed of such board. Code, Sec. B3-27.0.

The restriction against trustee borrowing from the fund is particularly noteworthy in light of the express authorization that beneficiaries of the fund may borrow from it. They may borrow from the

fund in the retirement system up to 50 percent of his or her accumulated contributions and provided the loan and interest thereon may be repaid prior to the borrower's reaching age 65 by specified additional deductions from compensation. Code, Sec. B3-28(a). The borrower must also have been a member of the plan for at least three years. Code, Sec. M3-28.0(c). The loans must be insured in accordance with a statutory schedule and up to \$3,000 against the member's death. This is intended to protect the integrity of the pension fund from death of borrowers. Code, Sec. B3-28.0(b). Furthermore, if the loan is not repaid by the time of retirement, the actuarial equivalent is taken in reduced benefits. Code, Sec. B3-28.0(c).

#### *D. The New York City Police Pension Plans*

The City of New York provides alternative plans for the police, both governed by the Code. The "Article I" Plan, which is closed to new membership, applies to individuals who were members prior to March 29, 1940, and is not actuarially funded. The "Article 2" Plan, which will be discussed herein, applies to any officer entering service after March 29, 1940. These plans have been validated by State statute, as well as by the Code. Laws 1940, ch. 437, Sec. 2. This statute has been construed as intending only to "overcome doubts about the possible invalidity of the local law," not supersede it. *Gorman v. New York*, 280 A.D. 39, 110 N.Y.S. 2d 711, affirmed 304 N.Y. 865, 109 N.E. 2d 881, remittitur amended 304 N.Y. 973, 110 N.E. 2d 895 (Ct. App. 1953).

##### *1. Coverage*

Individuals who have been admitted to "City service" after March 29, 1940, become participants in the Police Pension Fund. Code, Sec. B18-12.0. The statute defines "City service" as:

service in the police force in the department and shall include service credit acquired by transfer . . . from another pension or retirement system, of funds actuarially determined in a manner similar to that provided by such section of the retirement and social security law. In any case where a member, after becoming eligible to retire for service, is appointed police commissioner or deputy police commissioner, and in any case where a person who retired for service as a member of the pension fund is thereafter, appointed police commissioner or deputy police commissioner, his service as police commissioner or deputy police commissioner shall constitute city service. Code, Sec. B18-11.0(3).

##### *2. Funding*

The City Police Plan is contributory. Both the City and the participants make contributions towards funding of the plan.

The City is required to make annual contributions to the fund based on each member's salary, to provide a pension reserve. That reserve must be sufficient to cover the pension or death benefits which may accrue on behalf of the various participants in the plan, and is actuarially computed. Code, Sec. B18-24.0. The total contribution is divided into two component contributions. Normal contributions are to fund current accruals of the plan and deficiency contributions are to fund "past service liabilities" of the plan. The statute governing the two contributions states that:

(2) Normal contribution.—(a) Upon the basis of the latest mortality and other tables herein authorized and regular interest, the actuary shall determine the amount of the total liability for all benefits provided in this article on account of all members and beneficiaries, excluding the liability on account of future increased-take-home-pay contributions, if any, and the liability for benefits attributable to the annuity savings fund.

(b) The normal rate of contribution shall be the rate per centum obtained (i) by deducting from the amount of such total liability the sum of the present value of all required future deficiency contributions, the present value of all future member contributions on account of dependent benefits and the total funds on hand, excluding the amount of any unpaid moneys appropriated pursuant to section B18-27.0 of this article, and (ii) by dividing the remainder by one per centum of the present value of the prospective future salaries of all members, as computed on the basis of the latest mortality and service tables adopted pursuant to section B18-18.0 of this article, and on the basis of regular interest. The normal rate of contribution shall be determined and certified by the actuary after a valuation and shall continue in force until a new valuation and certification. Such valuations shall be made at such times as the actuary shall determine.

(c) The amount of the normal contribution annually due from the city to the contingent reserve fund shall be the amount obtained by multiplying the normal rate of contribution by the aggregate annual salaries of the members on June thirtieth of each year, and shall be payable with regular interest thereon in the second fiscal year following such June thirtieth.

(3) Deficiency contributions.—The deficiency contribution shall be an amount which, when paid to the contingent reserve fund in thirty-five equal annual installments, shall be the actuarial equivalent, on the basis of four percentum interest, of the difference between the accrued liability excluding the liability for benefits attributable to the annuity savings fund on June thirtieth, nineteen hundred sixty-seven and the total funds on hand, excluding the amount in the annuity savings fund, but including the amount of any unpaid moneys appropriated pursuant to section B18-27.0 of this article.

c. Whenever the board, upon recommendation by the actuary, shall determine that it is necessary to increase the reserves held in the annuity reserve fund, the pension reserve fund or the dependent benefit reserve fund, the board may direct that the amount so needed shall be transferred thereto from the contingent reserve fund. Code, Sec. B18-24.0.

The City also is required to contribute the current needs of pension plans to the pension reserve fund. Code, Sec. B18-25.0.

The covered employees also contribute to funding the City Police Plan. They contribute to the annuity savings fund an amount determined by the actuary of the Board which will, when deducted

from each payment of his prospective earnable compensation prior to his eligibility for retirement and accumulated at regular interest until the attainment of the minimum age or period of service retirement elected by him, shall be computed to provide, at that time, an annuity equal to twenty-five seventy-fifths of the pension the nallowable to him for service as a member. Code, Sec. B18-22.0.

Additional deductions may be made at a rate of up to fifty percent of the ordinary contribution rate. Code, Sec. B18-22.0(c).

### *3. Financing*

The requirement that contributions be made by the City to the pension funds are couched in mandatory language which should permit an Article 78 Proceeding, or mandamus order. Furthermore, there is a guarantee provision which states that:

a. Regular interest, charges payable, the creation and maintenance of reserves in the contingent reserve fund and the pension reserve fund and the maintenance of annuity reserves, pension reserves, dependent benefit reserves and reserves-for-increased-take-home-pay as provided for in this article and the payment of all pensions, pensions-providing-for-increased-take-home-pay, annuities, retirement allowances, refunds, death benefits, dependent benefits and any other benefits granted under the provisions of this article, are hereby made obligations of the city. Except as otherwise provided in section B18-27.1 of the code, all income, interest and dividends derived from deposits and investments authorized by this article shall be used for the payment of such obligations of the city. Upon the basis of each actuarial determination and appraisal provided for in this article, the commissioner shall prepare pursuant to section one hundred twelve of the charter and submit to the director of the budget an itemized esti-

mate of the amounts necessary to be appropriated by the city to the various funds to provide for payment in full during the ensuing fiscal year of all such obligations of the city accruing during the ensuing fiscal year. There shall be included annually in the budget a sum sufficient to provide for such obligations of the city. The comptroller shall pay the sums so provided into the various funds provided for by this article; subject to the provisions of subdivision b of this section.

b. (1) As used in this subdivision, the following terms shall mean and include:

(A) "Obligations fiscal year". Any fiscal year of the city (including any such fiscal year prior to or during or after which this subdivision becomes effective) with respect to which the city incurs obligations to pay sums to the pension fund pursuant to section B18-24.0 of the code and subdivision a of this section.

(B) "Payment fiscal year". The second fiscal year of the city succeeding an obligations fiscal year, during which second fiscal year the comptroller is required to make payments in behalf of the city, as provided for by this section, on account of the city's obligations with respect to such obligations fiscal year.

(2) Subject to the provisions of paragraph four of this subdivision b, in making any payment of the sums referred to in subdivision a hereof or any part thereof into such funds during a payment fiscal year, the comptroller, except as otherwise provided in section B18-27.1 of the code, shall credit in favor of the city and in *pro tanto* satisfaction of such sums or part thereof:

(A) all of such income, interest and dividends derived from deposits and investments authorized by this article, which income interest and dividends were received during the obligations fiscal year or during any prior fiscal year and which were not previously credited in favor of the city and in *pro tanto* satisfaction of (i) such sums or part thereof, or (ii) any other such obligations of the city to the retirement system; and

(B) that part of such income, interest and dividends received during the fiscal year next succeeding the obligations fiscal year, which is in excess of regular interest required to be allowed to the funds of the retirement system with respect to such next succeeding fiscal year and which part was not previously so credited; and

(C) that part of such income, interest and dividends received prior to the making of such payment and during such payment fiscal year, which is in excess of regular interest required to be allowed to the funds of the retirement system with respect to such payment fiscal year and which part was not previously so credited.

(3) Subject to the provisions of paragraph five of this subdivision b, the mayor, in submitting the proposed expense budget, shall have power to set forth therein, as amounts payable from sources other than the real estate tax levy, the estimated amounts which, pursuant to the preceding provisions of this subdivision b, will be available to the comptroller, during the fiscal year for which such budget is adopted, for satisfaction of the sums or any part thereof which would otherwise be payable to the retirement system by the city pursuant to subdivision a of this section; and the expense budget, as adopted, shall include such amounts which will be available to the comptroller during such fiscal year as amounts payable from sources other than the real estate tax levy.

(4) The provisions of paragraph two of this subdivision b, unless extended by law enacted by the legislature, shall not apply or be effective with respect to any payment fiscal year subsequent to the payment fiscal year beginning on July first, nineteen hundred seventy-four and ending on June thirtieth, nineteen hundred seventy-five.

(5) The provisions of paragraph three of this subdivision b, unless extended by law enacted by the legislature, shall not apply or be effective with respect to the submission and adoption of the expense budget of the city for any fiscal year of the city subsequent to its fiscal year beginning on July first, nineteen hundred seventy-four and ending on June thirtieth, nineteen hundred seventy-five. Code, Sec. B18-27.0.

Therefore, the beneficiaries of the City Police Plan should be able to enforce their rights to benefits through litigation enforcing general obligations of the city.

#### *4. Fiduciary standards*

In addition to the general statutory provisions relating to investments by the comptroller and board of trustees of the City Police Plan,

discussed earlier, there are additional limitations upon fiduciary activities under the New York City Administrative Code.

Every five years the actuary of the plan, appointed by the Board, must make a review of the actuarial valuation of funds of the board and an investigation "into the mortality, service and compensation experience of the members and beneficiaries as defined by this article." Code, Sec. B18-18.0. This provision protects the plan against changes in circumstances due to any factor, such as employment shifts or early retirements. It also corrects any possible misvaluations by the Board during the five year interim period.

The Board is also required to make an annual report, published in the City Record. The report shows

a valuation of the assets and liabilities of the funds provided for by this article as certified by the actuary, and a statement as to the accumulated cash and securities of the funds as certified by the comptroller, and shall set forth in such report such other facts, recommendations and data as may be of value in the advancement of knowledge concerning employees' pensions and annuities. Code, Sec. B18-19.0.

This report also acts to protect the investments in the plan funds from possible fiduciary irresponsibility or impropriety, since the interested public may keep a supervisory eye on the activities of the Board and beneficiaries.

Generally, the fiduciary authority for control of the plan funds is in the Board. The members of the Board are the trustees and have full power to invest (the several funds) subject to the terms, conditions, limitations and restrictions imposed by law upon savings banks in the making and disposing of investments by savings banks; and, subject to like terms, conditions, limitations and restrictions, such trustees shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities or investments in which any of the funds provided for by this article shall have been invested as well as of the proceeds of such investments and of any moneys belonging to such funds. Code, Sec. B18-28.0(a).

In addition to the aforementioned State statutory provisions limiting the investment of plan funds, the Code further provides that:

Notwithstanding the provisions of subdivision two of section one hundred seventy-seven of the retirement and social security law, or any other provision of law to the contrary, the amounts which may be invested by the pension fund in securities pursuant to the provisions of paragraphs (a), (b), (c), (d), (e) and (f) of subdivision twenty-six of section two hundred thirty-five of the banking law, shall be subject to the following maximum limits, in lieu of any such limits imposed by any other provision of law:

(1) Not more than fifty per cent of the assets of the pension fund shall be invested in such securities; and

(2) Not more than five percent of such assets shall be invested in the securities of any one corporation and its subsidiaries; and

(3) Not more than two per cent of the total issued and outstanding equity securities of any one corporation shall be owned by the pension fund. Code, Sec. B18-28.0(b).

The provisions of the Banking Law (see Appendix A) referred to in this provision of the Code are those delineating investment in (a) preferred stock of any corporation the net earnings of which meet certain standards, (b) guaranteed stock of any corporation the net earnings of which meet certain standards, (c) common stock of corporations listed on a national securities exchange and with a dividend record of at least ten years payment of dividends, (d) common stock of a casualty or fire insurance company with certain capital formation

requirements, (c) stock in any investment company registered under the Investment Company Act of 1940, meeting certain requirements. The provision of the Code quoted above attempts to restrict investment in these specific types of securities.

The actual custody of the pension funds is vested in the comptroller of the State. Code, Sec. B18-30.0. This custody, however, is subject to "the direction, control and approval" of the Board with regard to its disposition, investment, management and report. Code, Sec. B18-30.0.

Trustees and employees of the Board are precluded from having any:

interest, directly or indirectly, in the gains or profits of any investment of the pension fund or as such, directly or indirectly, from receiving any pay or emolument for their services. The trustees and such employees, directly or indirectly, for themselves or as agents or partners of others, shall not borrow any of its funds or deposits or in any manner use the same except to make such current and necessary payments as are authorized by such board; nor shall any such trustee or any such employee become an indorser or surety or become in any manner an obligor for moneys loaned by or borrowed of such pension fund. Code, Sec. B18-33.0.

This is to be contrasted with the provision generally permitting covered employees to borrow, with restrictions, from the pension funds. Code, Sec. B18-34.0.

#### *E. New York City Fire Department Pension Plan*

The New York City Fire Department Pension Plan (City Firepersons Plan) is set forth in the Administrative Code. There are, within the Code, three distinct plans—the so-called Article I Plan, the Article I-A Plan and the Article I-B Plan. The Article I Plan is closed to further admissions, and will not be discussed herein. The Article I-A Plan and I-B Plan are currently operative and will be discussed herein.

##### *1. The City Fire Department Plan: The Article I-A Plan*

###### *a. Coverage*

The Article I-A Plan covers all firepersons in "City service," but with certain limitations. The statutes governing the Article I-A Plan state that it covers:

all persons in city-service, as defined in this article, in positions in the competitive class of the civil service, who shall have served the required probationary period and shall have been appointed medical officers of the fire department or who shall have served the required probationary period and shall have been appointed as fourth grade firemen after March twenty-ninth, nineteen hundred forty and prior to the date on which this section as hereby amended takes effect, unless such person shall have elected to become a member of the fire department pension fund pursuant to article one-B of this title; and

b. all persons in city service, as defined in this article, in positions in the competitive class of the civil service, who shall have been appointed probationary medical officers of the fire department or probationary fireman on or after the date on which this section as hereby amended takes effect, unless such person shall have elected to become a member of the fire department pension fund pursuant to article one-B of this title. Code, Sec. B19-7.1.

The article defines "city-service" to mean

service in the uniformed force of the department and shall include service credit acquired by transfer pursuant to section 487a-10.0 of this code \* \* \*. Code, Sec. B19-7.0(3).

This will be seen to be substantially identical to the coverage requirements for the Article I-B Plan, the employee may choose which plan he or she wishes to be covered by.

*b. Funding*

Both the City Fire Department and the employees contribute towards funding the Article I-A Plan. The employees contribute to three funds: the annuity savings fund, the annuity reserve fund, and the dependent benefit reserve funds. The City contributes to the pension reserve fund and the contingent reserve fund.

The employees contribute to the annuity savings fund which is composed of the accumulated deductions from compensation of the employees intended to provide for their annuities and their "withdrawal allowance." The amount of deduction is determined by the actuary of the Board for each member, in an amount which "when deducted from each payment of his prospective earnable compensation prior to his eligibility for retirement and accumulated at regular interest until the attainment of the minimum age or period of service retirement elected by him, shall be computed to provide, at that time, an annuity equal to forty-five fifty-fifths of the pension then allowable by him for service as a member." Code, Sec. B19-7.2.

The employees contribute to the annuity savings fund an additional amount, not over fifty per cent of the regular contribution, in voluntary contributions for extra annuities. Code, Sec. B19-7.2(c).

The employees further contribute amounts to the annuity reserve fund and the dependent benefit reserve funds. The annuity reserve fund is the fund "from which shall be paid all annuities and all benefits in lieu of annuities." Code, Sec. B19-7.21(a). The dependent benefit reserve funds are funds from which "shall be paid all dependent benefits payable as provided. . . ." Code, Sec. B19-7.21(b). The contributions to these funds are based on mortality and other actuarial tables adopted by the Board. Code, Sec. B19-7.21(d).

The City contributes to the contingent reserve fund to accumulate the amounts necessary "to pay all pensions and all death benefits allowable." Code, Sec. B19-7.24(a). The amounts contributed are actuarially determined.

Upon the basis of the mortality and other tables herein authorized, and regular interest, the actuary shall compute the amount of contribution, expressed as a proportion of the compensation paid to each such member, which, if paid semi-monthly during the entire prospective city-service to cover the pension to which he might be entitled or which might be payable because of his city-service as a member and for the amount of cash benefits payable on his account by the city. Such proportion of compensation shall be computed to remain constant during the prospective city-service. The aggregate amount annually due from the city to the contingent reserve fund shall be the sum of such proportions of the earnable compensation of all such members in the preceding year. The cash benefits payable by the city under the provisions of this article to, or upon the death of, such a member in active service shall be paid from such contingent reserve fund. Upon the retirement of such a member, or upon his death in the performance of duty, an amount equal to the pension reserve for the pension payable by the city on account of his city-service as a member, shall be transferred from such fund to the pension reserve fund. Code, Sec. B19-7.22(b).

The City must contribute to the pension reserve fund the amounts, transferred from the contingent reserve fund needed to pay the current pension obligations of the Plan. Code, Sec. B19-7.23.

*c. Financing*

The contributions by the City of New York to its pension fund for the Article I-A Plan are required in mandatory terms: "All payments from such funds shall be made by such comptroller upon a voucher signed by the secretary of the board." Code, Sec. B19-7.29. Therefore, it would appear that an Article 78 Proceeding, or mandamus, could be brought to enforce the obligation of the City to pay pensions.

Furthermore, the Code provides that:

Regular interest, charges payable, the creation and maintenance of reserves in the contingent reserve fund and the pension reserve fund and the maintenance of annuity reserves, pension reserves and dependent benefit reserves as provided for in this article and the payment of all pensions, annuities, retirement allowances, refunds, death benefits, dependent benefits and any other benefits granted under the provisions of this article, are hereby made obligations of the city. All income, interest and dividends derived from deposits and investments authorized by this article shall be used for the payment of such obligations of the city. Upon the basis of each actuarial determination and appraisal provided for in this article, the commissioner shall prepare pursuant to section one hundred twelve of the charter and submit to the director of the budget an itemized estimate of the amounts necessary to be appropriated by the city to the various funds to provide for payment in full during the ensuing fiscal year of all such obligations of the city accruing during the ensuing fiscal year. There shall be included annually in the budget a sum sufficient to provide for such obligations of the city. The comptroller shall pay the sums so provided into the various funds provided for by this article. Code, Sec. B19-7.25.

Therefore, in addition to Article 78 Proceeding, the employees may enforce the City's obligation to make contributions to the Article I-A Pension Plan by means of law suit, as with other obligations of the City. The City also agrees to make such payments as part of its regular budget process.

*d. Fiduciary standards*

The pension fund for the Article I-A Plan is a corporation, to the extent that it has "powers and privileges of a corporation and by its name all of its business shall be transacted . . ." Code, Sec. B19-7.15. The Board of Trustees heads the corporation and is composed of the following individuals:

1. The fire commissioner who shall be chairman of the board and who shall be entitled to cast three votes.
2. The comptroller of the city who shall be entitled to cast three votes.
3. A representative of the mayor who shall be appointed by the mayor and who shall be entitled to cast three votes.
4. The director of finance of the city who shall be entitled to cast three votes.
5. The president of the uniformed firemen's association of greater New York who shall be entitled to cast two votes.
6. The vice-president of the uniformed firemen's association of greater New York who shall be entitled to cast two votes.
7. The treasurer of the uniformed firemen's association of greater New York who shall be entitled to cast two votes.
8. The chairman of the board of trustees of the uniformed firemen's association of greater New York who shall be entitled to cast two votes.
9. Three elected members of the executive board of the uniformed fire officers' association of the fire department, city of New York, of whom one shall be an officer of the said department with rank above that of captain and shall be entitled to cast one vote; another shall be a captain of the said department and shall be entitled to cast one cast; another shall be a lieutenant of the said department and shall be entitled to cast one and one-half votes.
10. The president of the uniformed pilots and marine engineers association, fire department, city of New York, who shall be entitled to cast one-half vote. Code, Sec. B19-7.17.

The Board of Trustees (Board of Estimate) will select an actuary who shall be a technical adviser to the board on all "matters regarding the operation of the funds provided for by this article." Code, Sec. B19-7.16. Furthermore, the actuary is to maintain the data as will be necessary for actuarial valuation of the funds, and every five years he must make an

actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries as defined by this article, and shall make a valuation of the assets and liabilities of the various funds provided for by this article, and upon the basis of such investigation and valuation such board shall: 1. Adopt for the pension fund such mortality, service and other tables as shall be deemed necessary; and 2. Certify the rates of deduction from compensation computed to be necessary to pay the annuities authorized under the provisions of this article; and 3. Certify the rates of contribution, expressed as a proportion of compensation of members at various ages, which shall be made by the city to the contingent reserve fund. Code, Sec. B19-7.17.

The Board must, furthermore, make annual reports, published in the City Record, showing:

a valuation of the assets and liabilities of the funds provided for by this article as certified by the actuary and a statement as to the accumulated cash and securities of the fund as certified by the comptroller, and shall set forth in such report such other facts, recommendations and data as may be of value in the advancement of knowledge concerning employees' pensions and annuities. Code, Sec. B19-7.17.

Therefore, the actuary must certify certain facts upon which the Plan is run, and these certified facts are annually published for the public to examine.

The Board of Trustees has the power to invest the Plan's funds and may do so, "subject to the terms, conditions, limitations and restrictions imposed by law upon savings banks in the making and disposing of investments . . ." Code, Sec. B19-7.26. See Appendix A.

While the Board has investment power, the custody of the pension funds is vested in the comptroller. Code, Sec. B19-7.28. He may hold such funds subject to the orders of the Board of Trustees.

The trustees and the employees assigned to the Board are prohibited from:

having any interest, directly or indirectly, in the gains or profits of any investment of the pension fund or as such, directly or indirectly from receiving any pay or emolument for their services. The trustees and such employees, directly or indirectly, for themselves or as agents or partners of others, shall not borrow any of its funds or deposits or in any manner use the same except to make such current and necessary payments as are authorized by such board; nor shall any such trustee or any such employee become an indorser or surety or become in any manner an obligor for moneys loaned by or borrowed of such pension fund. Code, Sec. B19-7.31.

This is to be contrasted with the rules regarding loans to ordinary employees covered by the Plan. These rules provide that the members may borrow if certain conditions are met, and subject to certain limitations:

Any member who shall have been a member continuously at least three years may borrow from the pension fund, subject to such rules and regulations as may be approved by such board, an amount not exceeding 40 per centum of the amount of his accumulated contributions provided that the amount so borrowed together with interest hereon, can be repaid before attainment of age 50 years by additional deductions of 10 per centum from his compensation made at the same time compensation is paid to the

member. The amount so borrowed together with interest at the rate of 6 per centum per annum on any unpaid balance thereof shall be repaid to the pension fund in equal installments by deduction from the compensation of the member at the time the compensation is paid, but such installments shall be at least 5 per centum of the member's earnable compensation and at least sufficient to repay before attainment of age 50 years, the amount borrowed with interest thereon. Notwithstanding anything to the contrary in this article, the additional deductions required to repay the loan shall be made, and the interest paid on the loan shall be credited to the proper funds of the pension fund. In lieu of loan, any member whose rate of contribution is cancelled, may withdraw from his account and may restore thereto in any year as he may elect any sum in excess of the maximum in his annuity savings account and due thereto at the end of the calendar year in which he became entitled to cancel his rate. The actuarial equivalent of any unpaid balance of a loan at the time any benefit may become payable shall be deducted from the benefit otherwise payable. Code, Sec. B19-7.32.

## *2. The City Fire Department Plan: Article I-B Plan*

### *a. Coverage*

The coverage under the Article I-B Plan is the same as that of the Article I-A Plan. The actual participation is optional with the employee—he or she may decide which plan to participate in.

### *b. Funding*

The Article I-B Plan has two distinct funds, the retirement allowance accumulation fund and the retirement allowance reserve fund. Code, Sec. B19-7.64. Both the participating employee and the City contribute towards funding the plan. The actuary computes for each member a periodic contribution which, as a percentage of the compensation of the employee at a constant rate, will fund the retirement allowance to which the member will become entitled. The member and the city both contribute percentages of that amount. Code, Sec. B19-7.65(b), (c). After October 1, 1951, twenty-five percent of the proportion is contributed by the member and seventy-five percent by the City. Code, Sec. B19-7.65.

Contributions to the retirement allowance reserve fund are made in the amounts required to currently pay pensions due. Amounts which are not due are retained in the retirement allowance accumulation fund.

### *c. Financing*

The same as the Article I-A plan.

### *d. Fiduciary standards*

While there are many similarities between the fiduciary provisions applicable to the Article I-A Plan and those applicable to the Article I-B Plan, there are distinct limitations on the investment power of the Board of Trustees. Under both Plans, the Board of Trustees has the investment power. Under the Article I-B Plan, however, the limitations expressed in the Code are those applied to savings banks, except that :

b. Notwithstanding the provisions of subdivision two of section one hundred seventy-seven of the retirement and social security law, or any other provision of law to the contrary, the amounts which may be invested by the pension fund in securities pursuant to the provisions of paragraphs (a), (b), (c), (d), (e) and (f) of subdivision twenty-six of section two hundred thirty-five of the banking law, shall be subject to the following maximum limits, in lieu of any such limits imposed by any other provision of law :

- (1) Not more than fifty percent of the assets of the pension fund shall be invested in such securities; and
- (2) Not more than five percent of such assets shall be invested in the securities of any one corporation and its subsidiaries; and
- (3) Not more than two percent of the total issued and outstanding equity securities of any one corporation shall be owned by the pension fund. Code, Sec. B19-7.69(b).

#### *F. The New York City Teachers' Retirement System*

The New York City Teachers' Retirement System (City Teachers' Plan) is organized in a manner like that of the State Teachers' Plan, to provide actuarially funded retirement benefits for the teachers in City schools. The governing body is the Teachers' Retirement Board (Board).

##### *1. Coverage*

The City Teachers' Plan includes all members of the Teachers' Retirement Association, which includes "all teachers" and "transferred contributors." Code, Sec. B20-3.0. For this plan, "teacher" means:

the superintendent of schools, the associate superintendents, the assistant superintendents, the director and the assistant director of the divisions of reference and research, the director and the assistant directors of the bureau of compulsory education, school census and child welfare, attendance teachers and specially certified attendance officers who are first employed by the New York City board of education on or after September first, nineteen hundred sixty-eight, attendance teachers and specially certified attendance officers who were members of the New York City board of education retirement system and who, on or before December thirty-first, nineteen hundred sixty-nine gave notice to the said board of education retirement system of their intention to transfer to the New York City teachers' retirement system, the director of attendance, assistant director of attendance, chief attendance officer, division supervising attendance officers, and district supervising attendance officers of the bureau of compulsory education, school census and child welfare, supervisors of school social workers, who are first employed by the New York City board of education. \* \* \* or who were members of the New York City board of education retirement system and who on or before December thirty-first, nineteen hundred seventy, gave notice to the said board of education retirement system of their intention to transfer to the New York City teachers' retirement system, the members of the board of examiners, the directors and the assistant directors of special branches, the supervisor and assistant supervisors of lectures, all principals, vice-principals, assistants-to-principals, heads of departments, and all regular and special teachers of the public day schools of the city, and all employees of the board of education appointed to regular positions in the service of the public schools at annual salaries and whose appointments were made or shall be made from eligible lists prepared as the result of examinations held by the board of examiners of the board of education. (Subd. 7 amended by L. 1969, ch. 507, May 10; L. 1970, ch. 769, May 12.) Cole, Sec. B20-1.0.

##### *2. Funding*

The system has six component funds, into which both the teachers covered by the plan and the City contribute. The contribution rate for teachers varies, depending upon whether the teachers elect to make optional additional payments for higher pension.

The teachers contribute an amount, actuarially computed, which, together with the interest which will accumulate on the contributions, will provide an annuity of twenty-five percent of his or her average salary. The deductions, however, may not exceed fifteen percent. Code, Sec. B20-20.0(2). Optional additional contributions up to six percent are also permitted. Code, Sec. B20-20.0(4).

The City contributes to the funding of the Plan. It will contribute to the expense fund in an amount sufficient to defray costs of administration of the plan. Code, Sec. B20-25.0.

The City also contributes to the contingent reserve fund, in an amount for normal contributions and deficiency contributions. These two contributions are defined by the Code:

b. Normal contribution.—(1) Upon the basis of the latest mortality and other tables herein authorized and regular interest, the actuary shall determine the amount of the total liability for all benefits provided in this title on account of all contributors and beneficiaries, excluding the liability on account of future increased-take-home-pay contributions, if any, the liability for benefits attributable to the annuity savings fund and to the variable annuity savings fund and the liability attributable to the pension reserve fund number two.

(2) The normal rate of contribution shall be the rate per centum obtained:

(a) by adding together:

(i) the present value of all required future primary deficiency contributions and of all required future secondary deficiency contributions; and

(ii) the total funds on hand, excluding the amount in the annuity savings fund and in the variable annuity savings fund and in pension reserve fund number two but including the amount of any unpaid money appropriated pursuant to section B20-30.0 of the code; and

(b) by subtracting from the amount of the total liability determined pursuant to paragraph one of this subdivision b the sum resulting from the addition prescribed by subparagraph (a) of this paragraph two; and

(c) by dividing the remainder resulting from the applicable subtraction prescribed by subparagraph (b) of this paragraph two by one per centum of the present value of the prospective future salaries of all contributors, as computed on the basis of the latest mortality and service tables adopted pursuant to section B20-13.0 of this title, and on the basis of regular interest.

(3) The normal rate of contribution shall be determined and certified by the actuary after a valuation and shall continue in force until a new valuation and certification. Such valuations shall be made at such times as the actuary shall determine.

(4) The city shall not pay a normal contribution to the contingent reserve fund in the fiscal year nineteen hundred seventy-one-nineteen hundred seventy-two or in the fiscal year nineteen hundred seventy-two-nineteen hundred seventy-three.

(5) The city shall pay to the contingent reserve fund in the fiscal year nineteen hundred seventy-two-nineteen seventy-three, in addition to any other amounts payable to such fund by the city in such year, the sum of twenty-three million five hundred thousand dollars, as a special contribution.

(6) The amount of the normal contribution due from the city to the contingent reserve fund with respect to the fiscal year nineteen hundred seventy-one-nineteen hundred seventy-two and with respect to each fiscal year thereafter shall be the amount obtained by multiplying the normal rate of contribution by the aggregate annual salaries of the members on June thirtieth of the fiscal year with respect to which such amount is due and shall be payable with regular interest thereon in the second fiscal year following such June thirtieth. (Subd. b amended by L. 1971, ch. 407, June 9, eff. July 1.)

c. Primary deficiency contributions.—The primary deficiency contribution shall be an amount which, when paid to the contingent reserve fund in thirty-five equal annual installments, shall be the actuarial equivalent, on the basis of four percentum interest, of the difference between (1) the accrued liability, excluding the liability for benefits attributable to the annuity savings fund and to the pension reserve fund number two, on June thirtieth, nineteen hundred sixty-seven and (2) the total funds on hand, excluding the amount in the annuity savings fund and in pension reserve fund number two.

d. Whenever the board, upon recommendation by the actuary, shall determine that it is necessary to increase the reserves held in the annuity reserve fund, the pension reserve fund number one or the pension reserve fund number two, the board may direct that the amount so needed shall be transferred thereto from the contingent reserve fund.

e. Contributions shall be paid into the contingent reserve fund in the manner and to the extent specified by section B20-41.1 of the code, to provide reserves-for-increased-take-home-pay.

f. (1) The city shall pay to the contingent reserve fund, in the manner provided in this subdivision f, the additional, accrued employer cost of providing the rights, privileges and benefits conferred :

(a) by subdivisions eighteen-a and eighteen-b of section B20-1.0 of the code (relating to an improved salary base for computing the benefits of certain contributors and discontinued members) ; and

(b) by section B 20-41.2 of the code (relating to the twenty-year pension plan) upon contributors who elect such rights, benefits and privileges pursuant to subdivision a of such section ; and

(c) by section B20-41.3 of the code (relating to the age-fifty-five-increased-benefits pension plan), paragraph f of subdivision one of Section B20-41.0 of the code (relating to eligibility of age-fifty-five-increased-benefits pension plan contributors for service retirement) and paragraph e of subdivision one of section B20-44.0 of the code (relating to service retirement pensions payable to age-fifty-five-increased-benefits pension plan contributors), upon contributors who elect such rights, benefits and privileges pursuant to subdivisions a and b of such section B 20-41.3.

(2) Such additional accrued cost shall consist of an amount, which shall be computed by the actuary, equal to the additional accrued liability of the retirement system, as of July first, nineteen hundred seventy, for such rights, benefits and privileges.

(3) The city shall pay to the contingent reserve fund, in thirty-five equal annual installments, beginning with the fiscal year of the city commencing on July first, nineteen hundred seventy-two, an amount which, when so paid in such installments, shall be the actuarial equivalent of the sum constituting the additional accrued cost computed pursuant to paragraph two of this subdivision f.

(4) The installments required to be paid by the city pursuant to the provisions of paragraph three of this subdivision f shall be collectively known as the "secondary deficiency contributions". (Amended by L. 1970, ch. 274, April 29.) Code, Sec. B20-26.0.

### *3. Financing*

The order for the City to contribute towards the fundings of the City Teachers' Plan is couched in mandatory language. Therefore, an article 78 proceeding would appear available. Furthermore, there is a guarantee of funding for the pension plan, which states that

regular interest, charges payable, the creation and maintenance of reserves in the contingent reserve fund and the maintenance of annuity reserves, pension reserves and reserves-for-increased-take-home-pay as provided for in this title and the payment of all pensions, pensions-providing-for-increased-take-home-pay, annuities, retirement allowances, refunds, death benefits, and any other benefits granted under the provisions of this title, are hereby made obligations of the city. Code, Sec. B20-30.0.

The obligation of the City to fund the plan may, therefore, also be enforced by suit against the City.

### *4. Fiduciary standards*

The control of the investment activities and of the funds of the City Teachers' Plan is vested in the Board. The Retirement Board has

exclusive control and management of such funds, and shall have full power to invest the same, subject to the terms, conditions, limitations and restrictions imposed by law upon savings banks in the making and disposing of investments by savings banks; and, subject to like terms, conditions, limitations, and restrictions, such trustees shall have full power to hold, purchase, sell, assign, transfer, or dispose of any of the securities and investments in which any of the funds provided for by this title shall have been invested as well as of the proceeds of such investments, and of any moneys belonging to such funds. Code, Sec. B20-31.0.

The custody of the funds, however, is vested in the comptroller. Code, Sec. B20-33.0. He or she may designate a deputy comptroller to act in his or her place at meetings of the retirement board, and the deputy may, therefore, act in all capacities as comptroller with regard to these particular funds. Code, Sec. B20-33.0.

There is a general prohibition against members and employees of the Retirement Board having interests in the investments of the financial activities of the Plan. The prohibition states that:

Except as provided in this title, the members and employees of the retirement board are prohibited from having any interest, directly or indirectly, in the gains or profits of any investment made by the retirement board or as such, directly or indirectly, from receiving any pay or emolument for their services. The members and employees of such retirement board, directly or indirectly, for themselves or as agents or partners of others, shall not borrow any of its funds or deposits or in any manner use the same except to make such current and necessary payments as are authorized by such board; nor shall any such member or employee become an endorser or surety or become in any manner an obligor for moneys loaned by or borrowed by such board. Code, Sec. B20-36.0.

Yet, it should be noted that loans may be made to other employees of the Plan, subject to the following restrictions:

Any teacher in city-service, who shall have been a contributor continuously for at least three years, may borrow from the retirement system, subject to such rules and regulations as may be approved by such board, an amount not exceeding fifty per cent of the sum of the amount of his accumulated deductions and his account in the variable annuity savings fund, provided that the amount so borrowed, together with interest thereon, can be repaid within four years by additional deductions from his compensation, made at the same time compensation is paid to the contributor. The amount so borrowed, together with interest at the rate of two per cent higher than the rate of regular interest applicable to the member on any unpaid balance thereof, shall be repaid to the retirement system in equal installments within a period not in excess of four years by deduction from the compensation of the contributor at the same time the compensation is paid, but such installments shall be at least five per cent of the contributor's earnable compensation; provided, however, that the entire balance of any loan, together with interest, may be paid by the contributor at any time within the period allotted for the repayment of the loan. However, the loan shall be limited to a sum which shall not require for repayment an amount in excess of twenty-five per cent of the contributor's salary. The above repayment shall be in addition to the rate of contribution for annuity purposes previously certified to the contributor by the retirement board. Each loan made pursuant to this section shall be insured by the retirement system, without cost to the member, against the death of such member in an amount up to but not exceeding two thousand dollars as follows:

1. Until thirty days have elapsed after the making thereof, no part of the loan shall be insured.

2. From the thirtieth through the fifty-ninth day after the making thereof, twenty-five per cent of the present value of the outstanding loan shall be insured.

3. From the sixtieth through the eighty-ninth day after the making thereof, fifty per cent of the present value of the outstanding loan shall be insured.

4. On and after the ninetieth day after the making thereof, all of the present value of the outstanding loan shall be insured. Upon the death of a member, the amount of insurance so payable shall be credited to his accumulated deductions. Notwithstanding anything to the contrary in this title, the addition deductions required to repay the loan shall be made, and the interest paid on the loan shall be credited to the proper funds of the retirement system. The actuarial equivalent of any unpaid balance of a loan at the time any benefit may become payable shall be deducted from any benefit otherwise payable, in accordance with rules and regulations adopted by the retirement board for this purpose. (Amended by L. 1958, ch. 158; L. 1959, ch. 529, July 1; L. 1964, ch. 314, April 3; L. 1968, ch. 286, May 14.) Code, Sec. B20-37.0.

The Retirement Board is authorized and directed to enter into contracts with agencies which will invest and administer the annuity

funds. Code, Sec. B20-57.0. The Code provides that the contract may be with one agency or more, but may not exceed five years with any one agency. It may, however, be renewed after five years. The contract is to be filed with the New York State Superintendent of Insurance. Code, Sec. B20-57.0. Alternative provisions on the investment and supplementary provisions decree that:

b. The retirement board as an alternative to entering into a contract or contracts as provided in subsection a hereof, may, only to the extent permitted by the insurance law, enter into a variable payment annuity contract or contracts with insurance companies providing for the benefits payable under the variable annuity program.

c. The variable annuity funds shall, for investment purposes, be treated as a single fund but may be invested by more than one agency.

d. Notwithstanding the provisions of any state or city law to the contrary, the assets of the variable annuity funds may be invested in such equities and other securities as are permissible for domestic life insurance companies or saving banks, subject to the following limitations:

1. No investment shall be made in the stock, shares or securities convertible into stock or shares of any one corporation and its subsidiaries which, at the time such investment is made will cause the aggregate market value of the stock, shares and securities convertible into stock or shares of such corporation and its subsidiaries owned by the variable annuity funds to exceed five per cent of the aggregate market value of the assets of such funds.

2. Not more than two per cent of the issued and outstanding stock, shares or securities convertible into stock or shares of any class of any one corporation shall be owned by such funds.

The foregoing provisions shall not limit the investment of the assets of variable annuity funds in municipal, county, state, federal or corporate obligations, not convertible into stock or shares, otherwise permitted by law. (Subd. d amended by L. 1968, ch. 169, April 8.)

e. Investment income and appreciation and depreciation of the assets shall be allocated to the individual variable annuity funds on a proportionate basis as of the end of each month.

f. Section B20-32.0, B20-33.0 and B20-34.0 shall not apply to the variable annuity funds.

g. Deposits and transfers to the variable annuity savings fund and the variable pension accumulation fund pursuant to section B20-55.0 shall be converted at once into units of equal value. At the end of each month, the number of units in the accounts of each individual in each such fund shall be increased by 0.3274 per cent, the percentage by which a sum of money is increased in one month if invested at an effective rate of interest of four per cent per year. Residual fractions of a unit shall be determined to the nearest hundredth of a unit.

h. The value of a unit for January nineteen hundred sixty-eight shall be ten dollars. For any month thereafter it shall be determined in accordance with paragraphs one, two and three following:

1. For any month preceding the month in which the method set forth in paragraph two below is applicable, the value of a unit shall be equal to the combined assets of the variable annuity savings fund and the variable pension accumulation fund at the beginning of such month, divided by the total number of units then in the individual accounts in such funds.

2. The retirement board shall establish the first month for which the method set forth in this paragraph applies. For such first month, and for any month thereafter, the value of a unit shall be equal to the value of a unit for the preceding month, multiplied by a factor which is equal to the ratio of (i) the amount resulting from ten thousand dollars invested for one month at a rate equal to (I) the average rate of investment results (including market value changes) in the variable annuity funds during the preceding month, less (II) the rate at which expenses are charged against such funds during such preceding month pursuant to subdivision j of this section, and less (III) the rate at which expenses and transfers for such preceding month are charged or deducted from the variable annuity funds, other than the variable contingency reserve fund, pursuant to subdivision k of this section and subdivision c of section B20-64.0, respectively, to (ii) ten thousand thirty-two dollars and seventy-four cents, the

amount of ten thousand dollars invested for one month at an effective rate of interest of four per cent per year. Such average rate of investment results, net of such expense charges and such transfers, shall be determined in accordance with rules and procedures established by the retirement board.

3. Unit values shall be determined to the nearest tenth of a cent. (Subd. h amended by L. 1968, ch. 925, June 22.)

i. The retirement board shall:

1. Publish, or provide for the publication of, an annual report of the operations of the variable annuity funds.

2. Furnish, or provide for the furnishing of, to each contributor who has units credited to him in the variable annuity savings fund and the variable pension accumulation fund an annual statement showing, as of the beginning of the current year, the value of a unit in such funds and the number of units credited to him in each fund.

j. Expenses incurred in the operation and administration of the variable annuity funds shall be charged against such funds.

k. The retirement board shall prepare an annual estimate of the additional expenses, if any, it has incurred that are attributable to the variable annuity program. An amount equal to such additional expenses shall be transferred from the variable annuity funds other than the variable contingency reserve fund, on a proportionate basis, to the expense fund. Such transfer shall be made in twelve equal monthly instalments immediately following the month in which such estimate is made, except that the transfer with respect to additional expenses incurred before January first, nineteen hundred sixty-eight, shall be made in from twelve to sixty equal monthly instalments, at the discretion of the retirement board.

1. Assets shall be valued at their market value or, in the absence of a readily available market value, then at a fair market value as determined in accordance with accepted practices. (Added by L. 1966 ch. 544 June 7.) Code, Sec. B20-57.0.

#### *G. The Board of Education Retirement System*

The Board of Education is permitted by statute to establish its own pension and retirement system for its employees. EL, Sec. 2575. This is the only pension or retirement program in the City of New York which operates under statutory law rather than under the Code.

##### *1. Coverage*

The retirement system for the New York City Board of Education requires participation of:

all civil employees permanently employed by said board other than superintendents and teachers who may now be retired under the provisions of other retirement laws. In any city in which there is a bureau of compulsory education, school census, and child welfare established under the provisions of this chapter, all persons, except for attendance teachers and specially certified attendance officers \* \* \* and further, except for the director of attendance, assistant director of attendance, chief attendance officer, division supervising attendance officer, supervisors of school social workers, \* \* \* provided that any such person who was \* \* \* a member of another retirement system in such city may continue such membership so long as he or she holds an office or position in such bureau. EL, Sec. 2575(a).

##### *2. Funding*

The plan appears to be funded on a "pay as you go" system. The statute declares that:

The board of estimate or the board of estimate and apportionment in a city having such body, and in other cities the officers or bodies performing the functions similar to those of a board of estimate \* \* \* shall appropriate annually a sum necessary to pay the expenses of the administration of this section, except that in the city of New York such appropriations shall be made pursuant to chapter six of the New York city charter, and also to pay such pensions to the employees herein described as they may be entitled to receive annually under the rules and regulations \* \* \*. EL, Sec. 2575(a).

There appears to be no provision in the Board of Education's Plan

for participant contributions and, therefore, the plan appears to be noncontributory.

### 3. *Financing*

The obligation of the City of New York to appropriate the moneys required to run the Board of Education Plan is phrased in mandatory terms, substantiating an article 78 proceeding. The statute says that:

In a city which had, according to the federal census of nineteen hundred forty, a population of one million or more, such estimate shall be filed with the mayor. If the total amount requested in such estimate shall be equivalent to or less than four and nine-tenths mills on every dollar of assessed valuation of the real property of such city liable to taxation, the city shall appropriate such amount. If the total contained in such estimate shall exceed the said sum \* \* \* such estimate shall, as to such excess, be subject to consideration and such action by the board of estimate, the council and the mayor as that taken upon departmental estimates submitted to the mayor \* \* \*. EL, Sec. 2576(5).

Therefore, the financing guaranty of article 78 proceeding, would only apply to the extent that the sums needed did not exceed 4/10 mills.

A specific provision regarding New York City is also added with regard to the financing of the pension funds for the Board of Education.

In a city having a population of one million or more, such city may in its discretion annually cause to be raised such sums of money as may be required for the purposes enumerated in paragraph c of subdivision one of section twenty-five hundred seventy-six of this article, in the manner provided by law for the raising of money for such purposes. EL, Sec. 2579.

The significance of this provision is to authorize the City of New York to raise the funds for the Board of Education Plan in any manner it raises funds for other pension funds.

### 4. *Fiduciary standards*

The information on moneys received by the Board of Education for its account and expenditures is to be included either in the annual financial statement of the fiscal officer, board of estimate or other official body, or in a report of the Board of Education. EL, Sec. 2577. Furthermore, the funds for the Board of Education are to be segregated from other City funds, and disbursed under authority of the Board of Education on written orders drawn on the city treasurer. EL, Sec. 2580. It is unlawful for the city treasurer or other authorized individual to permit disbursal of these funds for any other purposes. EL, Sec. 2580(4). Bonds may be required of employees. EL, Sec. 2584.

### *H. The closed funds: The New York City Department of Street-Cleaning Relief and Pension System, the New York City Department of Health Retirement Plan, the BMT System Pension Fund, and the IRT System Pension Fund*

There are two funds which, while not admitting new members, still bear note in a discussion of New York City Pension Plans. The New York City Department of Street-Cleaning Relief and Pension System, the New York City Department of Health Retirement Plan, the BMT System Pension Fund, and the IRT System Pension Fund are all closed funds.

The Street-Cleaning Relief Fund consists of assets held on the date the fund became inactive. It is supported and maintained by contributions and by income from other sources, such as forfeitures and pay deductions of its members for unauthorized absences or for suspen-

sions or fines, and certain income from refuse disposal operations. See Code, Sec. G51-3.0. The trustee is the Commissioner of Sanitation but he receives no compensation for this duty. Code, Sec. G51-4.0. He is subject to bonding requirements. Code, G51-5.0.

The membership is limited to those who were members on December 1, 1929, and their dependent beneficiaries. Code, Sec. G51-1.0. No full-time employment was required for participation. Code, G51-2.0. Contributions were made by both the participants and the employer, and the level of contributions may not be raised after the closure of the plan. It may however be reduced or excused. Code Secs. G51-3.2, 3.3, and 3.4.

The Health Department Pension Fund was closed on October 1, 1920. Code, Sec. G51-52.0. The assets of the fund consist of its capital on that date, certain contributions from members and income from certain fines and license permit fees. Code, Sec. G51-53.0. The board of estimate are trustees of the plan. Code, Sec. G51-54.0.

#### V. CONCLUSIONS

The pension and retirement plans of both the State of New York and the City of New York are complex programs for furnishing employees substantial benefits at retirement from government service. All offer actuarial valuations, in general, and funding, financing and fiduciary standards which must be adhered to under statutes or ordinances. The recent attempts by the New York Legislature to declare the type of investment which the pension and retirement plans must make might be construed as raising doubts about the security of the various funds, but the decisions of the State Court of Appeals in halting this action would seem to indicate that the funds in such plans have at least some measure of protection.

APPENDIX A—BANKING LAW OF NEW YORK SECTION 235

§ 235. Investment of funds

A savings bank may invest in the following property and securities and no others:

1. Obligations of the United States, or those for which the faith of the United States is pledged to provide for the payment of the interest and principal, or those for which annual contributions to be paid pursuant to contract by the United States government or any of its instrumentalities in accordance with an act of congress entitled the "Housing Act of 1949", are pledged as security for the payment of the interest and principal.

2. Obligations of this state, issued pursuant to the authority of any law of the state, or those for which the faith of this state is pledged to provide for the payment of the interest and principal.

3. Obligations of any state of the United States, or those for which the faith of any state of the United States is pledged to provide for the payment of the interest and principal, upon which there is no default and upon which there has been no default for more than ninety days; provided, that within ten years immediately preceding the investment such state has not been in default for more than ninety days in the payment of any part of principal or interest of any debt duly authorized by the legislature of such state to be contracted by such state after the first day of January, eighteen hundred seventy-eight, except debts representing a refunding or adjustment of any indebtedness originally contracted or in existence at that date or prior thereto.

4. Obligations of or those for which the faith of any city, county, town, village, school district, poor district, water district, sewer district or fire district in this state is pledged to provide for the payment of principal and interest, provided that they were issued pursuant to law and faith and credit of the issuing municipal corporation or district is pledged for their payment, bonds and debentures or other obligations of any public authority or commission or similar body created or approved by the state of New York having assets of not less than fifty million dollars; and bonds and debentures of any other public authority, commission or similar body which is legally obligated to establish rates which while any debt is outstanding will provide sufficient revenues for the cost of operation, maintenance and debt service, such debt service to include interest on all outstanding obligations and serial maturities and sinking funds, provided such other authority, commission or similar body shall issue financial statements at least annually which shall be available to the public, shall have had receipts from operations during each of the five fiscal years immediately preceding date of investment sufficient after meeting operation and maintenance expenses to cover debt service, and provided further that the revenues available for debt service received during the fiscal year immediately preceding investment or the average amount available for debt service for the three fiscal years preceding investment shall have been adequate to meet the maximum annual debt service of the bonds outstanding, and said obligations have not been in default as to principal or interest; and bonds, debentures or other obligations of any public authority or commission or similar body created by the state of New York, the average of receipts from the operations of which, during the three years immediately preceding the date of investment, after meeting operation and maintenance expenses, were not less than one hundred twenty-five percent of the maximum annual debt service on the bonds outstanding and which obligations have not been in default as to principal or interest.

5. (a) Obligations, excluding however, non-negotiable warrants, of any city or of any school district coterminous with or which includes such city, or of any county situated in one of the states of the United States which adjoins the state of New York, provided said city or county has a population, as shown by the last federal census next preceding such investment, of not less than ten thousand inhabitants, and has not, within twenty-five years preceding said in-

vestment, defaulted for more than one hundred and twenty days in the payment of any part either of principal or interest of any bond, note, or other evidence of indebtedness. The term "city" in this paragraph shall include any city, town, borough, village, township or other incorporated municipality. An investment made before August first, nineteen hundred twenty-eight, shall not under the population provision of this paragraph, as to the then owner thereof, cease to be an authorized investment for the moneys of savings banks.

(b) Obligations, excluding however, non-negotiable warrants, of any city or of any school district or county coterminous with or which includes such city, situated in any other of the states of the United States the obligations of which state are an authorized investment for the moneys of savings banks, provided said city has a population, as shown by the last federal census next preceding said investment, of not less than thirty thousand inhabitants, and was incorporated as a city at least twenty-five years prior to the making of said investment, and has not, within twenty-five years preceding said investment, defaulted for more than one hundred and twenty days in the payment of any part either of principal or interest of any bond, note, or other evidence of indebtedness. Provided further, that obligations issued by a city having a population of less than forty-five thousand inhabitants as shown by said census or by a school district or county shall not be an authorized investment for the moneys of savings banks unless the city, school district or county has power to levy taxes on the taxable real property therein for the payment of such obligations without limitation of rate or amount.

(c) If at any time the indebtedness of any city described in paragraphs (a) or (b) of this subdivision or in paragraph (c) of subdivision twenty-five of this section, together with the indebtedness of any district, municipal corporation or subdivision, except a county, which is wholly within the boundaries of such city, and together with a proportionate part of the indebtedness of any district, municipal corporation or subdivision, except a county, which is partly within the boundaries of such city, and together with so much of the indebtedness of any county wholly within the boundaries of such city and a proportionate part of so much of the indebtedness of any county partly within the boundaries of such city, as shall be in excess of five per centum of the valuation for the purposes of taxation of the real property in any such county, shall exceed twelve per centum of the valuation of real property in said city for the purposes of taxation, the obligations of such city or of any school district or of any county coterminous with or which includes such city, shall, thereafter, and until such indebtedness shall be reduced to twelve per centum of the valuation of real property in said city for the purposes of taxation, cease to be an authorized investment for the moneys of savings banks. If there is no county wholly or in part within such city or if the county wholly or in part within such city has neither any indebtedness nor power to incur indebtedness, the obligations of such city or of any school district coterminous with or which includes such city, shall not cease to be an authorized investment unless such indebtedness shall exceed the percentage above provided plus an additional three per centum. If at any time the indebtedness of any county described in paragraphs (a) or (b) shall exceed five per centum of the valuation of real property for the purposes of taxation, the obligations of such county shall thereafter, and until such indebtedness shall be reduced to five per centum of the valuation of real property for the purposes of taxation, cease to be an authorized investment for the moneys of savings banks. A proportionate part of any indebtedness for the purpose of this paragraph shall be, unless otherwise apportioned by law, that proportion which the valuation of taxable real property of a county, district, municipal corporation or subdivision within the boundaries of a city bears to the total valuation of all taxable real property of said county, district, municipal corporation or subdivision. Contract liability shall be excluded unless represented by stocks, bonds, notes, certificates of indebtedness or other like instruments and water debt shall be excluded and sinking funds applicable to debts not excluded shall be deducted, in determining the amount of any indebtedness hereunder.

(d) The provisions of paragraph (c) shall not apply to the obligations of any city which has taxable real property with a valuation for the purposes of taxation in excess of two hundred million dollars and which has a population as shown by the last decennial federal census of not less than one hundred fifty thousand inhabitants and shall not apply to the obligations of any school district or county coterminous with or which includes such city, provided that the city,

school district, or county, as the case may be, has power to levy taxes on the taxable real property therein for the payment of such obligations without limitation of rate or amount.

(e) The valuation of property for purposes of taxation under this subdivision and under subdivision twenty-five of this section shall be an official valuation duly made and recorded and in cases where the assessed valuation is based on a percentage of such official valuation, the percentage use shall have been authorized under statutory or charter power prior to the determination of such assessed valuation.

(f) No obligations issued after the year nineteen hundred thirty-eight by any city, county, school district or other municipality of any state other than New York shall be an authorized investment for savings banks unless such city, county, school district or other municipality shall have power to levy taxes on the taxable real property therein for the payment of such obligation without limitation of rate or amount.

(g) Obligations issued by a city, village, town, county, department, agency, district, authority, commission or other public body in this state or any other state of the United States payable out of the revenues of a public utility system providing water, electricity, gas or sewerage service, provided that if the public utility system is located outside the state, it must serve an area having a population of not less than one hundred thousand. Said city, village, town, county, department, agency, district, authority, commission or other public body shall be legally obligated by statute, charter, indenture or covenant to fix, maintain and collect charges or taxes, or both, to provide net revenues after operation and maintenance of the facilities used to provide such service sufficient to meet maturing interest, principal and sinking fund payments on such obligations or shall be empowered to require the fixing, maintaining, and collecting of such charges or taxes, or both, by duly authorized public officers or bodies, and shall be restrained by statute, charter, indenture or covenant from disposing of all or any substantial portion of such facilities unless provision is made for a continuance of the interest, principal and sinking fund payments due on such obligations, or for the retirement of such obligations, provided said city, village, town, county, department, agency, district, authority, commission or other public body shall have had net earnings during each of the five years immediately preceding investment sufficient to cover all debt service and further provided that the net earnings available for debt service for the year immediately preceding investment shall have been sufficient to meet the maximum annual debt service of the obligations outstanding, and said obligations shall not have been in default as to principal or interest.

5-a. Bonds and mortgages and notes and mortgages on unimproved and unencumbered real property in this state, as provided in this subdivision.

(a) A savings bank may invest to an amount not exceeding sixty per centum of the appraised value of any such real property or, in the case of such real property on which there has been installed facilities consisting of streets, sewers, and other facilities to accommodate utilities preliminary to construction of permanent structures, not exceeding seventy per centum of the appraised value of any such property; provided the plat of such property has been approved pursuant to section thirty-two of the general city law, section two hundred seventy-six of the town law or section one hundred seventy-nine-k of the village law and such plat has been filed in the office of the county clerk of the county in which the property is located within the time limits prescribed by law, and provided further full repayment of principal and interest shall be required within five years from the date of the making of the loan.

(b) For the purposes of this subdivision unimproved real property shall be real property the value of which has not been enhanced by the installation construction or erection on such property of a permanent structure or structures, or facilities, which are capable of producing income and which have an appraised value of not less than twenty per centum of the value of the property to be mortgaged.

6. Bonds and mortgages and notes and mortgages on improved and unencumbered real property, including leasehold estates, in this state, in any adjoining state, and, subject to such limitations and conditions as the banking board may prescribe by general regulation, in any other state of the United States, the District of Columbia or the Commonwealth of Puerto Rico, as provided in this subdivision.

(a) A savings bank may invest (1) to an amount not exceeding seventy-five per centum of the appraised value of any such real property; or (2) to an amount not exceeding eighty per centum of the appraised value of real property improved by a one or two family owner-occupied residence located not more than fifty miles from the principal office of the savings bank or located anywhere within the state of New York provided substantially equal monthly payments of principal and interest are required in amounts sufficient to pay all interest and effect full repayment of principal within forty years.

(b) A savings bank may invest to an amount not exceeding ninety-five per centum of the appraised value of real property, improved by a one or two family residence, which one or two family residence is occupied by the owner and is located not more than fifty miles from the principal office of the savings bank or located anywhere within the state of New York provided (1) monthly payments of principal and interest are required in amounts sufficient to pay all interest and effect full repayment of principal within seventy-five per centum of the estimated remaining useful life of the building or forty years, whichever is less, and (2) the certificate required by paragraph (e) of this subdivision contains a statement that the income of the borrower is, in the opinion of those making the certification, sufficient to enable him to make the required monthly payments, as well as an estimate of the remaining useful life of the building. Such monthly payments, in addition to the payment of principal and interest, shall include a sum equal to one-twelfth of the yearly real estate taxes and may include insurance premiums, school taxes and water rents payable to a municipal corporation which, if unpaid, would become a lien on such real property, provided, however, that the savings bank may waive the requirement of the monthly payment of one-twelfth of the yearly real estate taxes when the unpaid principal balance of the loan is reduced to eighty per centum of the current appraised value of the real property. No mortgage contract entered into at the time of making a loan pursuant to this paragraph shall provide for any subsequent monthly payment in an amount greater than any previous monthly payment.

(c) For the purposes of this subdivision real property upon which there is a building in process of construction, which when completed will constitute a permanent improvement with a value of more than twenty-five per centum of the value of such real property shall be considered improved real property, as shall real property with improvements thereon that are capable of producing income sufficient to pay all costs of operation and maintenance of such real property, all taxes thereon and to effect full repayment of principal and interest in accordance with the terms of the mortgage loan to be made pursuant to this subdivision.

(d) (1) Except for the purpose of complying with section two hundred thirty-five-c, no investment shall be made pursuant to the provisions of paragraphs (a), (b), or (h) of this subdivision, or subdivision five-a of this section, or paragraph (a) of subdivision eight of this section, when the total amount of such investments and the total amount of all real estate held by the savings bank, other than the real estate referred to in subparagraph (1) of paragraph (a) of subdivision nine of section two hundred thirty-five of this article, exceeds or by the making of such investment will exceed eighty per centum of the assets of the savings bank.

(2) The total amount of investments made by the savings bank pursuant to this subdivision in bonds and mortgages and notes and mortgages on real property located outside the state of New York and adjoining states shall not exceed twenty per centum of the assets of such savings bank.

(e) Except as hereinafter provided no investment in any bond and mortgage or any note and mortgage shall be made by any savings bank except upon the written and signed certificate of two or more persons appointed by the board of trustees stating that they have examined the real estate described in such mortgage and that in their judgment it affords adequate security for such investment, provided, however, that in case of a loan not exceeding thirty-five thousand dollars on a one or two family owner-occupied residence, such certificate may be executed by one person provided that it is approved in writing by one other person appointed by the board of trustees. Such certificate shall show separately the value of the land and the value of the building or buildings erected thereon and shall be filed and preserved among the records of the savings bank. In the case of a loan on a leasehold estate, the certificate of two or more persons appointed by the board of trustees shall state the following: (a) they have examined the real estate underlying the leasehold estate, (b) the value of such leasehold estate and (c) in their judgment, the leasehold estate affords adequate

security for such investment. Such certificate shall be filed and preserved among the records of the savings bank.

(f) For the purpose of protecting its interests a savings bank may release any obligation to pay, or guarantee of the payment of, principal or interest, or otherwise waive or modify any of the terms and conditions of any bond and mortgage, and of any note and mortgage, and may extend or reextend any bond and mortgage and any note and mortgage, and may also accept a sum less than the principal amount thereof in full payment and satisfaction of the same.

A savings bank may also waive its right to enforce payment of any bond or note secured by a mortgage on real property and may waive its right to obtain a deficiency judgment against the borrower in the event of foreclosure of such mortgage.

(g) Every mortgage and every assignment of a mortgage taken or held by a savings bank shall immediately be recorded or registered in the office of the proper recording officer of the county in which the real property described in the mortgage is located. This paragraph shall not apply to a participating interest in any mortgage which shall have been acquired by a savings bank under the provisions of subdivision fourteen of section two hundred thirty-four, paragraph (h) of this subdivision, and subdivision eighteen of section two hundred thirty-five.

(h) A savings bank may, subject to such regulations and restrictions as the banking board finds to be necessary and proper, participate and invest in (1) loans of a type that it is authorized to invest in pursuant to subparagraph (a) of paragraph four of subdivision eight of section two hundred thirty-five of this chapter and (2) in any bond and mortgage or note and mortgage on improved and unencumbered real property including leasehold estates, in which it is individually authorized to invest, which said mortgage is duly recorded or registered in the office of the proper recording officer of the county in which the real property described in the mortgage is located, provided that no such investment shall be made by a savings bank in any part interest in such mortgage which is junior or subordinate to any other part interest nor if the aggregate amount of all part interests in such mortgage when added together will exceed any percentage of the appraised value of such real property by which the authority of a savings bank to invest individually in such mortgage is limited. Investments made by any savings bank in mortgage loans pursuant to this subdivision and pursuant to subdivision twenty-eight of this section shall not, in the aggregate, exceed ten per centum of the assets or an amount equal to the surplus fund and undivided profits and surplus reserve of such savings bank, whichever is less, and shall be included in the computation of permissive investment in mortgage loans pursuant to paragraph (d) of subdivision six of this section.

(i) A mortgage loan upon a leasehold estate shall not be made unless such leasehold estate shall have an unexpired term of not less than twenty-one years, which term may include the term provided by an option of renewable enforceable at the exclusive discretion of the savings bank. No mortgage loan upon a leasehold estate shall be made or acquired by a savings bank unless the terms thereof shall provide, regardless of the period of the loan, for payments to be made by the borrower on the principal thereof at least once in each year in amounts which would be sufficient to completely amortize a loan whose period extended for four-fifths of the unexpired term of the lease, which term may include the term provided by an option of renewal enforceable at the exclusive discretion of the savings bank; or, in the case of a mortgage loan upon a leasehold estate in real property upon which there is a building in process of construction, such payments of principal need not be required during the period of construction or the first three years of the mortgage, whichever is shorter. The provisions of paragraphs (a), (b), (c), (d), (e), (f), (g), and (h) of this subdivision shall be applicable to loans made upon leasehold estates.

(j) A savings bank may invest to an amount not exceeding ninety-five per centum of the appraised value of real property to the extent that any amount of such investment in excess of seventy-five per centum of such appraised value is committed to be insured or is insured by the New York city rehabilitation mortgage insurance corporation in accordance with the provisions of article fourteen of the private housing finance law.

7. Railroad obligations as provided in this subdivision. (1) Obligations issued, assumed or guaranteed as to principal and interest by endorsement, or so guaranteed which guaranty has been assumed; or

(2) Obligations for the payment of the principal and interest of which a railroad corporation such as is described in this paragraph is obligated under the terms of a lease made or assumed : or

(3) Equipment obligations in respect of which liability has been incurred : by a railroad corporation incorporated under the laws of the United States, or any state thereof, and owning and operating within the United States not less than five hundred miles of standard-gauge railroad line, exclusive of sidings, or if the mileage so owned shall be less than five hundred miles, the railroad operating revenues from the operation of all railroad operated by it, including such revenues from the operation of all railroad controlled through ownership of all (except directors' qualifying shares) of the voting stock of the owning corporation, shall have been not less than ten million dollars each year for at least five of the six fiscal years next preceding such investment ; provided, however, (1) that in the five fiscal years next preceding such investment, the amount of income of such railroad corporation, available for its fixed charges, as hereinafter defined, (2) that at no time within such period of five years such railroad corporation, unless in process of reorganization or readjustment since completed, pursuant to applicable law, shall have failed regularly and punctually to pay the matured principal and interest on its mortgage and funded indebtedness ; and (3) that the security, if any, for such obligations shall be property wholly or in part within the United States and which obligations shall be

(a) fixed interest-bearing bonds secured by direct mortgage on railroad owned or operated by such railroad corporation : or

(b) fixed interest-bearing bonds secured by first mortgage upon terminal, depot or tunnel property, including lands, buildings and appurtenances, used in the service of transportation by one or more such railroad corporations, provided that such bonds be the direct obligation of, or that payment of principal and interest thereof be guaranteed by endorsement by, or guaranteed by endorsement which guaranty has been assumed by, one or more such railroad corporation ; or

(c) equipment obligations, comprising bonds, notes, certificates, conditional sale agreements or assignments of conditional sale agreements and participations therein, issued or made in connection with the purchase for use on railroads of new standard-gauge rolling stock through the medium of an equipment agreement, and which obligations, so long as any thereof shall be outstanding and unpaid or unprovided for, shall be secured by an instrument (1) vesting title to such equipment in a trustee free of encumbrance, or (2) creating a first lien on such equipment, or, pending such vesting of title, by the deposit of cash in trust, which deposit may be invested in whole or in part in obligations of the United States or obligations for which the faith of the United States is pledged to provide for the payment of the interest and principal, or obligations of any public housing agency as defined in the United States housing act of nineteen hundred thirty-seven, as amended, in the United States as are secured either (1) by an agreement between the public housing agency and the public housing administration in which the public housing agency agrees to borrow from the public housing administration, and the public housing administration agrees to lend to the public housing agency, prior to the maturity of such obligations, which obligations shall have a maturity of not more than eighteen months, moneys in an amount which, together with any other moneys irrevocably committed to the payment of interest on such obligations, will suffice to pay the principal of such obligations with interest to maturity thereon, which moneys under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such obligations at their maturity, or (2) by a pledge of annual contributions under an annual contributions contract between such public housing agency and the public housing administration if such contract shall contain the covenant by the public housing administration which is authorized by section 1421a(b) of Title 42, U.S. Code, and if the maximum sum and the maximum period specified in such contract pursuant to section 1421a(b) of Title 42, U.S. Code, shall not be less than the annual amount and the period for payment which are requisite to provide for the payment, when due, of all installments of principal and interest on such obligations, to an amount equal to the face amount of such equipment obligations issued in respect of such equipment title to which is not yet so vested ; provided further, that the maximum amount of such obligations so issuable shall not exceed eighty per centum of the cost of such equipment ; and provided further, that the owner, purchaser or lessee, or the owners, purchasers or lessees, of such equipment shall be obligated by the

terms of such obligations or of such instrument (a) to maintain such equipment in proper repair; (b) to replace any thereof that may be destroyed or released with other equipment of equal value, or, if released in connection with a sale thereof, to deposit the proceeds of such sale in trust for the benefit of the holders of such obligations pending replacement of such equipment; (c) to pay any and all taxes or other governmental charges that may be required by law to be paid upon such equipment; (d) to pay, in accordance with the provisions of such obligations or of such instrument, to holders, or to such trustee for the benefit of holders, of such obligations the amount of interest due thereon or of the dividends payable in respect thereof; and (e) to pay the amount of the entire issue of such obligations in such annual or semi-annual installment each year throughout a period of not exceeding fifteen years from the first date of issue of any thereof that the amount of the respective unmatured installments at any time outstanding shall be approximately equal; provided, further, that unless the owner, purchaser or lessee of such equipment or one or more of such owners, purchasers or lessees shall be such railroad corporation as is described in and meets the requirements of this subdivision preceding paragraph (a), such obligations shall be granted by endorsement as to principal and as to interest or dividends by such railroad corporations; or

(d) fixed interest-bearing bonds of such railroad corporation secured by irrevocable pledge as collateral under a trust agreement of other railroad bonds that are legal investments for savings banks under this section, have a maturity not earlier than the bonds that they secure and of a total face amount not less than the total face amount of the bonds that they secure; or

(e) fixed interest-bearing mortgage bonds other than those described in paragraphs (a) or (b) hereof, income mortgage bonds, collateral trust bonds or obligations other than those described in paragraph (d) hereof, or unsecured bonds or obligations, issued, assumed or guaranteed as to principal and interest by endorsement by, or so guaranteed which guaranty has been assumed by, such railroad corporation, provided that (a) the annual fixed charges and contingent interest charges of such railroad at the time of investment shall not exceed thirty per cent of the average annual income available for such charges for the five fiscal years next preceding, and (b) the net income of such railroad after all taxes and charges shall have averaged not less than fifteen million dollars annually in such period.

The amount of income available for fixed charges shall be the amount obtained by deducting from gross income all items deductible in ascertaining net income other than federal income taxes, contingent income interest and those constituting fixed charges. Fixed charges shall be: rent for leased roads, miscellaneous rents, fixed interest on funded debt, interest on unfunded debt and amortization of discount on funded debt.

Accounting terms used in the preceding paragraph shall be deemed to refer to those used in the accounting reports prescribed by the accounting regulations for common carriers subject to the provisions of the interstate commerce act. If the interstate commerce commission shall prescribe accounting regulations wherein shall be defined the term income available for fixed charges and the term fixed charges, the definitions thereof as so prescribed shall be taken and used in lieu of the definitions set forth in the preceding paragraph of this subdivision for all purposes hereof, except that federal income taxes shall not be deducted, nor shall federal income tax credits be included, in computing income available for fixed charges. In determining income available for fixed charges and fixed charges pursuant to this paragraph or the immediately preceding paragraph interest, dividends and rentals paid by a railroad corporation and included in both such amounts shall be eliminated.

For all purposes of this subdivision seven, the revenues, earnings, income and fixed charges of, and dividends paid by, any railroad corporation prior to the acquisition of all or substantially all of its railroad lines by another railroad corporation, through merger, consolidation, conveyance or lease, shall, while such lines remain in the possession of the acquiring corporation, be deemed to have been revenues, earnings, income and fixed charges of, and dividends paid by, such acquiring corporation.

Whenever a railroad corporation shall own (directly or through a subsidiary all of the stock of which, except directors' qualifying shares, is owned by such corporation) at least ninety per cent of the capital stock of one or more other railroad corporations, the property of which is operated by it under lease, the consolidated statements of all such railroad corporations may be used in deter-

miming the amount of income available for fixed charges and the amount of fixed charges.

Obligations of a railroad corporation the railroad lines of which have been so leased prior to April fifth, nineteen hundred twenty-nine, for the payment of which the lessee is not obligated, that are outstanding and officially listed by the banking department of the state of New York as authorized investments prior to that date, shall be and remain authorized investments hereunder; provided, that such railroad lines shall be in the possession of and be operated by a railroad corporation such as is described in and meets the requirements of the provisions of this subdivision preceding paragraph (a).

Notwithstanding any other provisions of this subdivision, equipment obligations described in paragraph (c) which shall have been issued, assumed or guaranteed by any railroad corporation classified by the interstate commerce commission as a class one railroad and which are not in default, shall be authorized investments hereunder.

Notwithstanding any of the provisions of this subdivision, fixed interest-bearing obligations of railroad corporations, excluding terminal, depot and tunnel corporations, which are eligible for purchase by savings banks on December thirty-first, nineteen hundred fifty-two under the provisions of subdivisions seven or nineteen of this section, or which shall thereafter become eligible pursuant to the provisions of this subdivision seven, as amended, if not in default, shall be and remain eligible hereunder, provided that the income available for fixed charges, as herein defined, of the railroad corporation which has issued, assumed or guaranteed such obligations, or which operates under lease the railroad lines of the corporation which has issued, assumed or guaranteed such obligations, shall have averaged for the five fiscal years next preceding the time of investment not less than twice the interest charges for the last such fiscal year on all equipment obligations, and other obligations eligible hereunder, of such railroad corporation which remain outstanding at time of investment.

Fixed interest-bearing bonds of terminal, depot and tunnel companies which are eligible for purchase by savings banks on December thirty-first, nineteen hundred fifty-two under the provisions of subdivisions seven or nineteen of this section, or which shall thereafter become eligible pursuant to the provisions of this subdivision seven, as amended, shall be and remain eligible hereunder, provided that the principal and interest thereof be guaranteed by endorsement by, or guaranteed by endorsement which guaranty has been assumed by, a railroad corporation which meets the requirements of the preceding paragraph for continuing the eligibility of its own fixed interest-bearing obligations.

Not more than twenty-five per centum of the assets of any savings bank shall be loaned or invested in the bonds, notes, certificates, conditional sales agreements, assignments of conditional sale agreements and participations therein in this subdivision seven defined, and not more than ten per centum of such assets shall be invested in such bonds, notes, certificates, conditional sale agreements, assignments of conditional sale agreements and participations therein for which any one railroad corporation of this state shall be obligated, and not more than five per centum of such assets shall be invested in the bonds, notes, certificates, conditional sale agreements, assignments of conditional sale agreements and participations therein for which any one railroad corporation not of this state shall be obligated.

Street railroad corporations shall not be considered railroad corporations within the meaning of this subdivision.

7-a. Any savings bank which prior to April first, nineteen hundred thirty-eight acquired any railroad obligation eligible at the time of acquisition for investment by savings banks may continue to hold such obligation as though the same continue to be eligible by law for new investment by such savings bank.

8. Promissory notes and other agreements as provided in this subdivision.

(1) Promissory notes payable to the order of the savings bank within ninety days from date, which are:

(a) Secured by one or more mortgages in which a savings bank may invest; provided the amount loaned is not in excess of ninety per centum of the principal sum secured by such mortgage or mortgages. The assignment of every mortgage taken as security for any such note shall be recorded or registered in the office of the proper recording officer of the county in which the real property described in such mortgage is located, unless such mortgage or mortgages have been so assigned by a savings bank.

(b) Secured by any of the stocks and bonds in which a savings bank may invest: provided that (1) the amount of the loan is not in excess of ninety per centum of the market value of such stocks and bonds; and (a) the term "stocks", as used in this paragraph, shall be deemed to refer to stocks eligible for investment by a savings bank other than in accordance with the provisions of subdivision twenty-six of this section.

(c) Made by a savings and loan association which has been incorporated three years or more and has an accumulated capital of at least fifty thousand dollars.

(2) Promissory notes payable to the order of the savings bank within one year from date which are secured by the assignment of a deposit in any savings bank; provided the amount of the loan is not in excess of the amount of such deposit.

(3) Any loan secured by not less than a like amount of direct obligations, which will mature in not exceeding eighteen months from the date of such loan, of the United States or of this state, or of any city, county, town, village or school district of this state or of any such department, agency or instrumentality of the United States or this state.

(4) (a) Promissory notes representing loans and advances of credit for the purpose of financing alterations, repairs and improvements upon or in connection with, or as the superintendent may authorize the equipping of existing structures, and the building of new structures, upon urban, suburban, or rural real property (including the restoration, rehabilitation, rebuilding and replacement of such improvements which have been damaged or destroyed by earthquake, conflagration, tornado, hurricane, cyclone, flood or other catastrophe), by the owners thereof or by lessees of such real property under a lease expiring not less than six months after the maturity of the loan or advance of credit or by lessees under proprietary leases from a corporation or partnership formed for the purpose of the cooperative ownership of real estate, provided: (1) the amount of such loan, advance of credit, or purchase made for the purpose of financing the alteration, repair, equipping or improvement of existing structure or the building of new structure does not exceed ten thousand dollars; (2) the maturity thereof does not exceed one hundred twenty-one months; (3) the maximum amount which may be paid by the borrower for interest, discount, and fees of all kinds in connection with the transaction shall be as computed pursuant to and for the purposes of this section, six dollars per annum discount per one hundred dollars of the face amount of the loan if the maturity thereof does not exceed sixty-one months and five dollars per annum discount per one hundred dollars of the face amount of the loan if the maturity thereof exceeds sixty-one months, but in no event shall the interest charged as to any loan authorized by this subparagraph exceed a rate of one per centum per month; and (4) the loan shall be paid in equal or substantially equal monthly installments calculated from the date of the note; provided, however, that in addition thereto the savings bank may contract to charge the borrower: (i) the fees payable to the appropriate public officer to perfect any lien or other security interest taken to secure the loan or the premium, not in excess of such filing fee, payable for any insurance in lieu of such filing; (ii) in case of default, and in accordance with the provisions of the instrument evidencing the obligation, either a fine in an amount not to exceed five cents per dollar on any installment which has become due and remained unpaid for a period in excess of ten days, but no such fine shall exceed five dollars and only one fine shall be collected on any such installment regardless of the period during which it remains in default, and provided further that should the aggregate of such fines collected in connection with any loan exceed two per centum of such loan, or in any event twenty-five dollars, the savings bank shall refund such excess to the borrower within sixty days after the loan is paid in full, or subject to an allowance of unearned interest attributable to the amount in default, interest on each amount past due at a rate not in excess of one per centum per month during the period of delinquency; (iii) the actual expenditures, including reasonable attorney's fees, for necessary court process; and (iv) in case the savings bank insures a borrower under a group life insurance policy, group health insurance policy, group accident insurance policy, or group health and accident insurance policy, or requires insurance on personal property securing any such loan, an amount not in excess of the premiums chargeable in accordance with rate schedules then in effect and on file with the superintendent of insurance for such insurance by the insurer. No savings bank shall require a borrower to place any sum on deposit, or to make deposits in lieu of regular periodic installment payments, or to do or refrain from doing any other act which would entail additional expense or sacrifice, as a condition precedent to granting

a loan or advance of credit under the authority of this subdivision. Notwithstanding the provisions of this paragraph no refund of excess fines shall be required if it amounts to less than one dollar.

(b) Promissory notes representing loans and advances of credit for the purpose of defraying the cost of attendance of one or more students the income of whose family is fifteen thousand dollars or more per year at the time the loan or loan commitment is made at a university or college or for the purpose of defraying the cost of attendance of one or more students at an elementary or secondary school providing education required for minors: provided, however, that no such loan shall bring the total unpaid principal balances of any one or more loans made by such savings bank to the borrower pursuant to this subparagraph to an amount in excess of twenty thousand dollars; and further provided that the maturity of any such loan does not exceed eighty-five months; and further provided that the maximum amount which may be paid by the borrower for interest, discount, and fees of all kinds in connection with the transaction shall be as computed pursuant to and for the purposes of this subparagraph, six dollars per annum discount per one hundred dollars of the face amount of the loan if the maturity thereof does not exceed thirty-seven months and five dollars per annum discount per one hundred dollars of the face amount of the loan if maturity thereof exceeds thirty-seven months but in no event shall the interest charge as to any loan authorized by this subparagraph exceed a rate of one per centum per month, as computed pursuant to this subparagraph reckoned on each loan or advance from the date thereof, calculated on any of the following bases: (i) on the unpaid principal amount of such loans and advances from time to time outstanding, or (ii) for each month on an average balance outstanding determined by dividing by two the sum of the balances of unpaid principal of such loans and advances outstanding on two dates during such month, as specified in such agreement: the first of which dates being not later than the fifteenth day of such month and the second being not earlier than the sixteenth day of such month and not less than ten nor more than twenty days after the first day or (ii) for each month on a fixed amount selected from a schedule, which fixed amount may exceed the average daily balance under (i) above, or the average balance if determined under (ii) above, by a differential of not more than five dollars, provided the same fixed amount is also used for computing interest for any month for which such balance exceeds said fixed amount by any amount up to at least the same differential; and further provided that the loan shall be paid in equal or substantially equal monthly installments calculated from the date of the note. No fee, commission, expense, or other charge whatsoever shall be taken, received, reserved or contracted for in addition to the maximum rate of interest authorized by this subparagraph except (i) the fees payable to the appropriate public officer to perfect any lien or other security interest taken to secure the loan or the premium, not in excess of such filing fee, payable for any insurance in lieu of such filing: (ii) in case of default, and in accordance with the provisions of the instrument evidencing the obligation, either a fine in an amount not to exceed five cents per dollar on any installment which has become due and remained unpaid for a period in excess of ten days, but no such fine shall exceed five dollars and only one fine shall be collected on any such installment regardless of the period during which it remains in default, and provided further that should the aggregate of such fines collected in connection with any loan exceed two per centum of such loan, or in any event twenty-five dollars, the savings bank shall refund such excess to the borrower within sixty days after the loan is paid in full, or, subject to an allowance of unearned interest attributable to the amount in default, interest on each amount past due at a rate not in excess of one per centum per month during the period of delinquency: (iii) the actual expenditures, including reasonable attorney's fees, for necessary court process; and (iv) in case the savings bank insures a borrower under a group life insurance policy, group health insurance policy, group accident insurance policy, or group health and accident insurance policy, or requires insurance on personal property securing any such loan, an amount not in excess of the premiums chargeable in accordance with rate schedules then in effect and on file with the superintendent of insurance for such insurance by the insurer. No savings bank shall require a borrower to place any sum on deposit, or to make deposits in lieu of regular periodic installment payments, or to do or refrain from doing any other act which would entail additional expense or sacrifice, as a condition precedent to granting a loan or advance of credit under the authority of this subparagraph, except under such terms and conditions as the superintendent

may from time to time approve. Notwithstanding the provisions of this subparagraph no refund of excess fines shall be required if it amounts to less than one dollar.

(c) Promissory notes secured by mobile home chattel paper evidencing a monetary obligation incurred to finance the purchase of a mobile home located at the time of such purchase, or to be located within ninety days, at a semipermanent site within the state and to be maintained as a residence of the borrower, the borrower's spouse, child, grandchild, parent or grandparent.

(1) For this subparagraph :

(i) "mobile home chattel paper" means written evidence of both a monetary obligation and a security interest of first priority in a mobile home and any equipment installed or to be installed therein ; and

(ii) "mobile home" means a movable dwelling constructed to be towed on its own chassis and undercarriage, at least forty feet long and ten feet wide and containing living facilities suitable for year-round occupancy by one family, including permanent provisions for eating, sleeping, cooking and sanitation.

(2) If the loan is for the purpose of financing the purchase of a new mobile home,

(i) it shall mature not later than one hundred eighty months after the date thereof, and

(ii) the amount advanced shall not exceed one hundred per cent of the sum of (a) the manufacturer's invoice price of such mobile home (including any installed equipment), excluding freight, plus (b) the invoice price of the manufacturer of any new equipment installed or to be installed by the dealer excluding freight.

(3) If the loan is for the purpose of financing the purchase of a used mobile home,

(i) it shall mature not later than ninety-six months after the date thereof, and

(ii) the amount advanced shall not exceed one hundred per cent of the purchase price of the mobile home actually paid or the wholesale value of such mobile home (including any installed equipment) as established in the dealer's market, whichever is the lower.

(4) The loan shall be payable in equal or substantially equal monthly installments calculated from the date of the loan. Interest, which may be taken in advance, may be charged thereon, computed from the date of the loan to the date of the last installment payable thereunder, if the loan has a maturity (i) not exceeding thirty-seven months, at a rate not to exceed six dollars per annum discount per one hundred dollars of the face amount or ten dollars if the interest so computed is less than that amount, or (ii) exceeding thirty-seven months, at a rate not to exceed five dollars per annum discount, per one hundred dollars of the face amount or ten dollars if the interest so computed is less than that amount ; provided that the interest which may be charged ; if it exceeds ten dollars, shall not exceed one per cent per month on the unpaid principal balance.

(5) The authorized interest shall include all charges incident to investigating and making any loan. No fee, commission, expense, or other charge shall be permitted except that the savings bank may contract to charge the borrower (i) the fees payable to a public officer to perfect any lien or other security interest taken to secure the loan, or the premium, not in excess of such fee, payable for any insurance in lieu of such filing ; (ii) in case of default, and in accordance with the instrument evidencing the obligation, either a fine in an amount not to exceed five per cent on any installment which has become due and remained unpaid for a period in excess of ten days, but no such fine shall exceed five dollars and only one fine shall be collected on any such installment regardless of the duration of the default, and provided further that should the aggregate of such fines collected in connection with any loan exceed two per cent of such loan or twenty-five dollars, the savings bank shall refund such excess within sixty days after the loan is paid in full, or, subject to an allowance of unearned interest attributable to the amount in default, interest on each amount past due at a rate not in excess of one per cent per month during the delinquency ; (iii) the actual expenditures, including reasonable attorney's fee for necessary court process, and (iv) in case the savings bank insures a borrower under a group life, health, accident, or group health and accident insurance policy, or requires insurance on the property securing such loan, an amount not in excess of the premiums lawfully chargeable. No savings bank shall require a borrower to place any sum on deposit, or to make deposits in lieu of regular periodic installment payments, or to do or refrain from doing any other act which would entail additional expense or sacrifice, as a condition to a mobile home loan except as the superintendent may from time to time approve. No refund of excess fines need be made if it amounts to less than one dollar.

(6) As a condition of any loan made pursuant hereto, the borrower shall certify that the mobile home, against which the loan is made, is intended to be maintained in the state as a residence of the borrower, the borrower's spouse, child, grandchild, parent or grandparent. If the mobile home shall not be so maintained on the ninetieth day next succeeding the date of the loan or if it is removed from the state at any time before the first anniversary of the date of the loan, then, in either event and notwithstanding anything to the contrary in this subparagraph, the loan and all authorized charges shall become immediately due and payable subject to the refund provisions of subparagraph (c) of paragraph four and the borrower may, if the contract so provides, be required to pay as an additional authorized charge, a penalty in an amount not to exceed two per cent of the face amount of the loan.

(7) No investment shall be made by a savings bank pursuant hereto if the total amount invested by it pursuant to this subparagraph exceeds, or by the making of such investment will exceed, an amount equal to five per cent of the assets of the savings bank.

(8) Subject to such limitations and conditions as the banking board may prescribe by general regulation, a savings bank may make a loan pursuant to this subparagraph which the federal housing administrator has insured or has made a commitment to insure and may receive and hold such debentures as are issued by the federal housing administrator in payment of such insurance, or which is guaranteed pursuant to the provisions of the act of congress entitled the "Servicemen's Readjustment Act of 1944." No law of this state prescribing the nature, amount or form of security or requiring security upon which loans or advances of credit may be made or prescribing or limiting the period for which loans or advances of credit may be made or limiting the amount of any class of loans, advances of credit or purchases which may be made shall be deemed to apply to loans, advances of credit or purchases made or to loans acquired by purchase pursuant to this item.

(d) A borrower may prepay any loan made pursuant to the provisions of subparagraphs (a), (b) or (c) of this paragraph (4) in full or, with the consent of the savings bank, may refinance the loan. In the event of such prepayment or refinancing, the savings bank shall refund: (1) the unearned portion of the interest previously deducted to the borrower to the ratable extent at least that the sum of the unpaid balances of the loan scheduled at regular periodic intervals of not more than one month from the date of repayment to and including the maturity of the final installment bears to the sum of all the unpaid balances of the loan schedule at like periodic intervals from its inception to and including the maturity of the final installment; provided, however, that if the amount of interest previously deducted (i) was less than ten dollars, no refund shall be required; or (ii) that if the interest previously deducted exceeded the sum of ten dollars and the earned interest is less than that amount, the savings bank may retain such an additional amount as will bring the earned interest to the sum of ten dollars and refund the remainder, and provided further, that unless the loan is refinanced, no refund shall be required if it amounts to less than one dollar; (2) if a charge was made to the borrower for premiums for insuring the borrower under a group life insurance policy, or under a group health, group accident or group health and accident insurance policy, the excess of the charge to the borrower therefor over the premiums paid or payable by the savings bank, if such premiums were paid or payable by the savings bank periodically or the refund for such insurance premium received or receivable by the savings bank, if such premium was paid or payable in a lump sum by the savings bank, provided that no such refund shall be required if it amounts to less than one dollar; and (3) if maturity is accelerated due to the default of the borrower and judgment is obtained, the borrower shall be entitled to the same rebate as if the loan had been prepaid in full on the date of acceleration.

(5) Promissory notes payable to the order of the savings bank from a resident of the state of New York provided that payment of each note is guaranteed by the New York Higher Education Assistance Corporation, or promissory notes payable to the order of the savings bank, provided that such notes are insured or covered by a commitment to insure issued by the Federal Education Commissioner in accordance with the provisions of the act of congress entitled "Higher Education Act of 1963."

8-a. Promissory notes representing loans for the purpose of financing the purchase of or refinancing an existing ownership interest in certificates of stock or other evidence of an ownership interest in, and a proprietary lease from, a cor-

poration or partnership formed for the purpose of cooperative ownership of real estate in this state, as provided in this subdivision.

A savings bank may, subject to such regulations as the banking board finds necessary and proper, invest to an amount not exceeding eighty-five per centum of the purchase price or, in the case of a refinancing, the appraised value of certificates of stock or other evidence of an ownership interest in and a proprietary lease from, a corporation or partnership formed for the purpose of the cooperative ownership of real estate within the state, for the purpose of financing a purchase of or refinancing an existing ownership interest in such a corporation or partnership, provided (a) such investment is secured within ninety days from the making of the loan by an assignment or transfer of the stock or other evidence of an ownership interest of the borrower and a proprietary lease; and (b) repayment of principal and interest shall be effected within thirty years. Notwithstanding any other provision of law, the maximum rate of interest which may be charged, taken or received upon any loan or forbearance made pursuant to this subdivision may exceed the rate of interest prescribed by the banking board in accordance with section fourteen-a by no more than one and one-half per centum per annum.

9. Real estate provided in this subdivision.

(a) A savings bank may purchase or acquire the following real estate:

(1) A plot whereon there is or may be erected a building suitable for the convenient transaction of the business of the savings bank, from portions of which not required for its own use a revenue may be derived, and a plot whereon parking accommodations are, or are to be, provided, with or without charge, primarily for its customers or employees or both. The aggregate of all investments of a savings bank in such plots and buildings shall not exceed twenty-five per centum of the surplus fund of such savings bank, except with the approval of the superintendent.

(2) Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its business.

(3) Such as it shall purchase at sales under judgments, decrees or mortgages held by it.

(4) In lieu of instituting an action to foreclose a mortgage lien, a savings bank may purchase a deed to the underlying real property.

(5) A whole or part interest in a "project" as defined in the New York state urban development corporation act pursuant to section six or eight of such act. An investment by a savings bank in a single project shall not exceed one per centum of the assets or ten per centum of the net worth of such savings bank, whichever is less, and the aggregate of all investments of a savings bank in such projects and investments in securities pursuant to subparagraph one-a of paragraph (a) of subdivision twenty-one of this section shall not exceed five per centum of the assets or fifty per centum of the net worth of such savings bank, whichever is less. For the purposes of this subdivision, "net worth" of a savings bank shall mean the excess of its assets at book value, less allocated reserves, over known liabilities.

(b) Every parcel of real estate acquired by a savings bank shall be conveyed to it directly by name, or, subject to such regulations and restrictions as the banking board finds to be necessary and proper, may be taken in the name of duly authorized nominee, and the conveyance shall be immediately recorded or registered in the office of the proper recording officer of the county in which such real estate is located.

(c) Every parcel of real estate acquired by a savings bank, except real estate purchased or acquired pursuant to subparagraph five of paragraph (a) of this subdivision, shall be sold by it within five years from the date on which it shall have been acquired unless:

(1) There shall be (1) a building thereon used by the savings bank as a place of business, or (2) parking accommodations provided thereon primarily for its customers or employees or both; or

(2) The superintendent, on application of its board of trustees, shall have extended the time within which such sale shall be made.

10. Bonds and other obligations of Savings and Loan Bank of the State of New York.

11. Farm loan bonds, including consolidated bonds, issued by federal land banks, federal intermediate credit bank debentures, including consolidated debentures, issued by federal intermediate credit banks and bonds, debentures or other obligations of banks for cooperatives, including consolidated debentures issued by banks for cooperatives organized under the laws of the United States.

12. Bankers acceptances and bills of exchange which are eligible for purchase in the open market by federal reserve banks and which have been accepted by a bank, a trust company, a private banker or an investment company, as those terms are defined in this chapter, or by a banking corporation which is organized under the laws of the United States or of any state thereof and which is a member of the federal reserve system.

Except in the case of a trust company all of the stock of which is owned by not less than twenty savings banks, the aggregate liability of any bank, trust company, private banker or banking corporation to any savings bank for acceptances, advances of federal funds and deposits, or of any investment company to any savings bank for acceptances, shall not exceed twenty-five per centum of the capital and surplus of such bank, trust company, private banker, investment company or banking corporation, or five per centum of the aggregate amount credited to the depositors of such savings bank, whichever amount is smaller.

12-a. (a) Obligations of any corporation organized under the laws of any state of the United States maturing within two hundred seventy days, provided that such obligations receive the highest rating of an independent rating service designated by the banking board.

(b) Subject to such regulations as the banking board may impose, certificates of deposit issued by (1) a bank, trust company or national bank whose principal office is located in this state or (2) a banking corporation organized under the laws of the United States or of any state thereof with assets in excess of one hundred million dollars.

12-b. Advances of federal funds to designated depositaries, provided such advances are made on the condition that they be repaid on the next business day following the day on which the advance is made. For purposes of this subdivision and subdivision twelve of this section, the term "federal funds" shall mean funds which a savings bank has on deposit at a depository which are exchangeable for funds on deposit at a federal reserve bank; and the term "business day" shall mean any day on which the savings bank, the depository and the federal reserve bank where the funds are on deposit are all open for general business.

13. Bonds of any corporation which at the time of such investment is incorporated under the laws of the United States or any state thereof, or the District of Columbia, and transacting the business of supplying electrical energy or artificial gas, or natural gas purchased from another corporation and supplied in substitution for, or in mixture with, artificial gas, for light, heat, power and other purposes, or transacting any or all of such business, provided at least eighty per centum of the gross operating revenues of any such corporation are derived from such business, subject to the following conditions:

(a) Such corporation shall have all franchises necessary to operate in territory in which at least seventy-five per centum of its gross income is earned. Such corporation shall file with the superintendent of banks and make public in each year a statement and a report giving the income accounting covering the previous fiscal year and a balance sheet showing in reasonable detail the assets and liabilities at the end of the year.

(b) Either the outstanding full paid capital stock together with premiums thereon and the surplus of such corporation shall be not less than two-thirds of the total debt secured by mortgage lien on any part or all of its property, or the outstanding full paid capital stock together with premiums thereon and surplus and unsecured debt not maturing within five years and not in excess of fifty per centum of such capital stock, premiums and surplus shall be equal to at least three-fourths of the total debt secured by mortgage lien on any part or all of its property, provided, however, that in case of a corporation having no-par value shares, the amount of capital which such shares represent shall be the capital as shown by the books of the corporation.

(c) Such corporation shall have been in existence for a period of not less than eight fiscal years and at no time within such period of eight fiscal years next preceding the date of such investment shall said corporation have failed to pay promptly and regularly the matured principal and interest of all its indebtedness direct, assumed or guaranteed, but the period of life of the corporation or corporations from which a major portion of its property was acquired by consolidation, merger or purchase shall be considered together in determining the required period.

(d) For a period of five fiscal years next preceding such investment the net earnings of such corporation shall have averaged per year not less than two times the average annual interest charges on its total funded debt applicable to that period, and for the last fiscal year preceding such investment such net earn-

ings shall have been not less than twice the interest charges for a full year on its total funded debt outstanding at the time of such investment, and for such period the gross operating revenues of any such corporation shall have averaged per year not less than two million dollars.

(e) In determining the qualifications of any bond under this subdivision where a corporation shall have acquired its property or any substantial part thereof within five years immediately preceding the date of such investment by consolidation or merger, or by the purchase of all or a substantial portion of the property of any other corporation or corporations, the gross operating revenues, net earnings, and interest charges of the several predecessor or constituent corporations shall be consolidated and adjusted so as to ascertain whether the requirements of paragraph (d) of this subdivision have been complied with.

(f) Such bonds shall be (1) bonds secured by a first or refunding mortgage on property owned and operated, or controlled, by the corporation issuing or assuming them, or underlying mortgage bonds secured by a lien on property owned and operated, or controlled, by the corporation issuing or assuming them, provided that such underlying mortgage bonds are to be refunded by a junior mortgage providing for their retirement, that the bonds under such junior mortgage comply with the requirements of this subdivision, and that such underlying mortgage is either a closed mortgage or remains open solely for the issue of additional bonds which are to be pledged under such junior mortgage and provided that the aggregate principal amount of bonds secured by such first or refunding mortgage plus the principal amount of all the underlying outstanding bonds shall not exceed two-thirds of the net value of the physical property owned or controlled as shown by the books of the owning corporation, and subject to the lien of such mortgage or mortgages securing the total mortgage debt and provided further, that if a refunding mortgage, it must provide for the retirement on or before the date of their maturity of all bonds secured by prior liens on the property, or (2) bonds other than mortgage bonds, provided, that (a) for a period of five fiscal years next preceding such investment the net earnings of such corporation shall have averaged per year not less than two and one-half times the average annual interest charges on its total funded debt applicable to that period, and for the last fiscal year preceding such investment such net earnings shall have been not less than two and one-half times the interest charges for a full year on its total funded debt outstanding at the time of such investment, and (b) the capital stock together with premiums thereon and surplus of such corporation shall not be less than two-thirds of its total funded debt outstanding, and (c) such bonds, if issued for a term longer than fifteen years, shall have been issued under an indenture containing a covenant providing for the establishment of a sinking fund for the benefit of such bonds whereby such bonds shall be redeemed at an annual rate of not less than two per centum of the largest principal amount of their issue at any one time notwithstanding, and (d) the mortgage bonds of such corporation, if any, shall qualify under the provisions of this subdivision.

(g) (1) The gross operating revenues and expenses of a corporation for the purposes of this subdivision shall be, respectively, the total amount earned from the operation of, and the total expense of maintaining and operating, all property owned and operated, or leased and operated, by such corporation, as determined by a system of accounts adopted by a federal, state, or municipal public service commission, public utility commission or other similar regulatory body. The gross operating revenues and expenses, as defined above, of subsidiary companies may be included, provided all the mortgage bonds and a controlling interest in stock or stocks of such subsidiary companies are pledged as part security for the mortgage debt of the principal company. The net value of any property shall be its value as shown by the books of the corporation less the amounts of any reserves for depreciation, retirement or amortization thereof. Property shall be deemed to be controlled by a corporation if such corporation shall own not less than ninety percent of the capital stock of the corporation owning such property.

(2) The net earnings of any corporation for the purposes of this subdivision shall be the balance obtained by deducting from its gross operating revenues, its operating and maintenance expenses, taxes other than federal and state income taxes, rentals and provision for renewals and retirements of the physical assets of the corporation, and by adding to said balance its income from securities and miscellaneous sources but not, however, to exceed fifteen per centum of said balance. The term funded debt shall be construed to mean all interest-bearing debt maturing more than one year from date of issue.

(3) In the computation for the purposes of this subdivision of the ratio of mortgage debt to net mortgaged property value there shall be excluded from the amount of outstanding mortgage bonds the amount of any cash deposited with the trustee of the mortgage and held in trust pursuant to the terms of such mortgage.

(h) Not more than twenty-five per centum of the assets of any savings bank shall be loaned on or invested in bonds of such electric and gas corporations, and not more than two per centum of the assets of any savings bank shall be invested in the bonds of any one such corporation, as authorized by this subdivision.

(i) As used in this subdivision, the term "bond" includes a note or debenture.

14. Bonds of any corporation which at the time of such investment is incorporated under the laws of the United States or any state thereof, or the District of Columbia, and authorized to engage, and engaging, in the business of furnishing telephone service in the United States, subject to the following conditions:

(a) Such corporation shall have been in existence for a period of not less than eight fiscal years and at no time within such period of eight fiscal years next preceding the date of such investment shall said corporation have failed to pay promptly and regularly the matured principal and interest of all its indebtedness direct, assumed, or guaranteed, but the period of life of the corporation, together, with the period of life of any predecessor corporation or corporations from which a major portion of its property was acquired by consolidation, merger or purchase, shall be considered together in determining the required period; and such corporation shall file with the superintendent of banks and make public in each year a statement and a report giving the income account covering the previous fiscal year and a balance sheet showing in reasonable detail the assets and liabilities at the end of the year.

(b) The outstanding full paid capital stock together with premiums thereon and the surplus of such corporation shall at the time of such investment be equal to at least two-thirds of the aggregate of its funded debt and the total funded debt, exclusive of any such funded debt held by such corporation, of every telephone corporation a majority of the capital stock of which is owned by such corporation.

(c) For a period of fiscal years next preceding such investment the net earnings of such corporation shall have averaged per year not less than two and one-half times the average annual interest charges on its total debt applicable to that period, and for the last fiscal year preceding such investment such net earnings shall have been not less than twice the interest charges for a full year on its total funded debt outstanding at the time of such investment, and for such period the gross operating revenues of any such corporation shall have averaged per year not less than five million dollars.

(d) In determining the qualifications of any bond under this subdivision where a corporation shall have acquired its property or any substantial part thereof within five years immediately preceding the date of such investment by consolidation or merger, or by the purchase of all or a substantial portion of the property of any other corporation or corporations, the gross operating revenues, net earnings and interest charges of the several predecessor or constituent corporations shall be consolidated and adjusted so as to ascertain whether the requirements of paragraph (c) of this subdivision have been complied with.

(e) The gross operating revenues and expenses of a corporation for the purposes of this subdivision shall be, respectively, the total amount earned from the operation of, and the total expense of maintaining and operating, all property owned and operated, or leased and operated, by such corporation, as determined by a system of accounts adopted by the federal communications commission, a public service commission, or public utility commission, or other similar federal or state regulatory body.

(f) The net earnings of any corporation for the purposes of this subdivision shall be the balance obtained by deducting from its gross operating revenues, its operating and maintenance expenses, provision for depreciation of the physical assets of the corporation, taxes other than federal and state income taxes, rentals and miscellaneous charges, and by adding to said balance its income from securities and miscellaneous sources but not, however, to exceed fifteen per centum of said balance. The term funded debt shall be construed to mean all interest-bearing debt maturing more than one year from date of issue.

Whenever a corporation shall own a majority of the capital stock of one or more other telephone corporations, the consolidated statements of all such telephone corporations shall be used in determining the amount of net earnings

available for interest charges, and the amount of interest charges, of such corporation.

(g) Not more than twenty-five per centum of the assets of any savings bank shall be loaned on or invested in bonds of such telephone corporations, and not more than three per centum of the assets of any savings bank shall be invested in the bonds of any one telephone corporation, as authorized by this subdivision.

(h) As used in this subdivision, the term "bond" includes a note or debenture.

15. Bonds, debentures, consolidated debentures or other obligations of any federal home loan bank or banks, or of Tennessee Valley Authority, and obligations of, or instruments issued by and fully guaranteed as to principal and interest by, the Federal National Mortgage Association, and notes, bonds, debentures, mortgages and other evidences of indebtedness of the United States Postal Service.

16. Stock of a federal reserve bank in the amount necessary to qualify for membership in such bank.

17. Stock of a federal home loan bank in the amount necessary to qualify for membership in such bank and in such additional amounts as are approved by the banking board.

18. Stock, capital notes and debentures of any trust company and of any other corporation organized under the laws of this state, to the extent and upon such conditions as are or have been authorized by the banking board, provided all of the stock of such trust company or corporation is, or is to be, owned by not less than twenty savings banks; and any participation certificates or any other form of participation, though junior in interest, issued by any such trust company in its individual capacity or as trustee or by any such corporation, and representing participation in first mortgages assigned by savings banks in payment of stock, capital notes or debentures of any such trust company or any such corporation, or assigned in connection with the sale of mortgages by such savings bank to such trust company or such corporation.

18-a. A savings bank, subject to such limitations and conditions as the banking board may prescribe by general regulation, may invest in

(1) Any certificate issued by a trust company or other corporation, organized under the laws of this state, all of the capital stock of which is owned by at least twenty savings banks or issued by a subsidiary corporation all of the capital stock of which is owned by such trust company or other corporation, which certificate evidences a beneficial interest in a bond and mortgage or note and mortgage or in bonds and mortgages or notes and mortgages, upon real property, in which a savings bank would be authorized to invest directly or evidences a beneficial interest in a participation in a bond and mortgage or note and mortgage or in bonds and mortgages or notes and mortgages in which a savings bank would be authorized to have participation directly, or

(2) Any note issued by such trust company or such other corporation or issued by such subsidiary corporation, which note is secured by a bond and mortgage or note and mortgage or by bonds and mortgages or notes and mortgages, upon real property, in which a savings bank would be authorized to invest directly or is secured by a participation in a bond and mortgage or note and mortgage or in bonds and mortgages or notes and mortgages in which a savings bank would be authorized to have a participation directly.

18-b. Promissory notes or other obligations issued by a trust company, organized under the laws of this state, all of the capital stock of which is owned by at least twenty savings banks.

19. Securities of corporations which securities are made eligible for investment by savings banks by the banking board.

20. Subject to such regulations and restrictions as the banking board finds to be necessary and proper, (a) (1) any bond and mortgage insured by the federal housing commissioner, or for which a commitment to insure has been made by the federal housing commissioner, or (2) any bond and mortgage guaranteed pursuant to the provisions of the act of congress entitled the "Servicemen's Readjustment Act of 1944", or (3) provided the mortgage is a first lien, any bond and mortgage at least twenty per centum of which is guaranteed pursuant to the provisions of such act, or (4) a participation in any loan or a part interest in any bond and mortgage, secured by real property in the state of New York, to the extent that the small business administration is committed to pay the principal and interest thereof; (b) any whole or part interest in any such bond and mortgage or in any whole or part interest in any such bond and mortgage.

which bond and mortgage is held for the benefit of the holder or holders of a whole interest or part interests therein by any entity or entities with which a savings bank is authorized to participate pursuant to this paragraph, but no such investment shall be made in any part interest which is junior or subordinate to any other part interest therein; (c) any bond secured by any such mortgage or mortgages, which mortgage is, or which mortgages are, held for the benefit of the holder or holders of the bond or bonds secured thereby, by a savings bank or bank or trust company, or by a trust company or other corporation all of the capital stock of which is owned by not less than twenty savings banks; and (d) and property improvement note issued pursuant to the provisions of the national housing act, provided the savings bank investing in such note shall have qualified for and received in connection therewith a contract of insurance from the federal housing commissioner. A savings bank may receive and hold such debentures as are issued in payment of any such insurance. No law of this state prescribing or limiting the interest rate upon loans or advances of credit or prescribing a penalty for violation thereof or prescribing the nature, amount or form of security or requiring security upon which loans or advances of credit may be made or prescribing or limiting the period for which loans or advances of credit may be made or limiting the amount of any class of loans, advances of credit or purchases which may be made shall be deemed to apply to loans, advances of credit or purchases made or to loans acquired by purchase pursuant to this subdivision.

The provisions of subdivision six of this section, except those of paragraph (f) thereof, shall not apply to investments made pursuant to this subdivision by any savings bank. Paragraphs (a), (b) and (c) of section one of chapter eight hundred ninety-seven of the laws of nineteen hundred thirty-four as amended shall not apply to savings banks. The term "bond", as used in this subdivision, includes a note. The authority provided in this subdivision to invest in any bond and mortgage guaranteed pursuant to the provisions of the act of congress entitled the "Servicemen's Readjustment Act of 1944", shall include authority to acquire title to real property in connection with investing in an installment contract for the sale of real property, so guaranteed, where the purchaser under such contract is in possession and control of the property, and title is acquired by the savings bank solely as security for the obligations of the purchaser.

21. (a) Subject to such regulations and restrictions as the banking board finds to be necessary and proper:

(1) Stock and obligations, not otherwise eligible for investment by the savings bank, of any corporation organized under any law of this state for the purpose of acquiring, constructing, owning, maintaining, operating, selling or conveying a housing project or projects (not including hotels but including accommodations for retail stores, shops, offices and other community services reasonably incident to such projects) located within this state, provided that all the stock and obligations of any such corporation have been or are originally issued to one or more savings banks of this state and/or to a corporation, or corporations, organized under the laws of this state and all of the stock of which is or is to be owned by not less than twenty savings banks, and which is, or by agreement has become, subject to the supervision of the banking department.

(1-a). Stock and obligations, not otherwise eligible for investment by the savings bank, of any "subsidiary" of the New York state urban development corporation, as defined in the New York state urban development corporation act, provided that all the stock and obligations of any such subsidiary is or is to be owned by one or more savings banks of this state, or by such other owners of such stock and obligations as may be approved by the superintendent of banks.

(2) Corporate interest-bearing securities, other than those issued by any corporation organized under the laws of a foreign country except Canada whose securities are not registered with the United States Securities and Exchange Commission or listed on a national securities exchange in accordance with the Securities Exchange Act of 1934, as amended, and interest-bearing securities of any state in the United States or of any public authority, commission or instrumentality organized under the laws of any state of the United States or of any political subdivision of any such state, not otherwise eligible for investment by the savings bank, which are not in default as to either principal or interest when acquired, provided that no investment shall be made pursuant to this subparagraph (2) in the securities of any corporation if the total direct liabilities of such corporation to the savings bank exceed, or by the making of such investment will exceed, ten per centum of the total direct liabilities of such corporation or one per centum of the assets of the savings bank, whichever amount is less. The term "securities", as used in this subparagraph (2), means

such bonds, notes, debentures and other obligations for payment of money as are negotiable, or conditional sale agreements, assignments of conditional sale agreements and participations therein which are issued or made by railroads for the purchase of rolling stock, and which have a maturity of not less than five years from the date of issue or making, or, if issued or made in a series or repayable in installments, an average maturity of not less than five years from the date of issue or making.

(b) No investment shall be made by a savings bank pursuant to subparagraphs one and two of paragraph (a) of this subdivision if the total amount invested by it pursuant to such paragraph, together with the total amount invested by it pursuant to any provisions of any law other than the banking law, exceeds, or by the making of such investment will exceed, an amount equal to ten per centum of the assets of the savings bank. An investment by a savings bank in a single subsidiary of the New York state urban development corporation pursuant to subparagraph one-a of paragraph a of this subdivision shall not exceed one per centum of the assets or ten per centum of the net worth of such savings bank, whichever is less, and the aggregate of all investments of a savings bank in such subsidiaries and investments in securities pursuant to subparagraph five of paragraph (a) of subdivision nine of this section shall not exceed five per centum of the assets or fifty per centum of the net worth of such savings bank, whichever is less. For the purposes of this paragraph, "net worth" of a savings bank shall mean the excess of its assets at book value, less allocated reserves, over known liabilities.

(c) Investments authorized by this subdivision shall not be required to be included in any list furnished by the superintendent pursuant to section thirty-five of this chapter.

(d) For the purposes of sections two hundred seventy-four, two hundred eighty-five and four hundred thirty-five of this chapter, investments authorized by this subdivision shall not be deemed investments in which savings banks may legally invest, except that investments authorized by subparagraph one-a of paragraph (a) of this subdivision shall be deemed investments in which savings banks may legally invest for the purposes of section three hundred seventy-nine of this chapter.

(e) For the purposes of section three hundred fifty-nine-1 of the general business law, investments authorized by subparagraph (2) of paragraph (a) of this subdivision shall not be deemed investments in which savings banks may legally invest.

21-a. Interest-bearing obligations payable in United States funds which at the time of investment are rated in one of the three highest rating grades by each rating service, designated by the banking board, which has rated such obligations, provided that the aggregate amount invested in the obligations of any single issuer pursuant to this subdivision and pursuant to subparagraph (2) of paragraph (a) of subdivision twenty-one of this section may not exceed one per centum of the assets of the savings bank, and provided further that the aggregate amount invested in the interest-bearing obligations of any single issuer pursuant to this subdivision and pursuant to any provision of this section specifically authorizing such investment, may not exceed the percentage limitations contained in any such provision.

22. Certificates of investment in savings banks life insurance fund.

23. Certificates representing advances to the surplus fund of its life insurance department.

24. Obligations issued or guaranteed by the international bank for reconstruction and development.

24-a. Obligations issued or guaranteed by the inter-American development bank.

24-b. Obligations issued or guaranteed by the Asian development bank.

24-c. Obligations guaranteed by the youth facilities project guarantee fund and participations therein.

25. Obligations of the Dominion of Canada, or of any province or city of the Dominion of Canada, as provided in this subdivision.

(a) Obligations of the Dominion of Canada, or those for which the faith of the Dominion of Canada is pledged to provide for the payment of the interest and principal, provided that the principal and interest of such obligations are payable in United States funds.

(b) Obligations of any province of the Dominion of Canada or those for which the faith of any such province is pledged to provide for the payment of the interest and principal upon which there is no default and upon which there has been no default for more than ninety days; provided, that within ten years immediately

preceding the investment such province has not been in default for more than ninety days in the payment of any part of principal or interest of any debt duly authorized by the legislature of such province; and provided that the principal and interest of such obligations are payable in United States funds; and provided further, that if at any time the net debt, as hereinafter defined, of any such province shall exceed twenty-five per centum of the valuation of real property in such province for the purposes of taxation, the obligations of such province shall, thereafter, and until such net debt shall be reduced to twenty-five per centum of the valuation of real property in such province for the purposes of taxation, cease to be an authorized investment for the moneys of savings banks. The term "net debt" as used in this paragraph shall mean the aggregate of all direct obligations funded and unfunded of any such province and all other obligations excluding any on which interest is being paid out of other than the ordinary revenues of such province; less sinking funds applicable to such obligations.

(c) Obligations of any city in Canada, provided that said city has a population, according to the last federal censns of Canada next preceding said investment, of not less than one hundred fifty thousand inhabitants, and has not, within twenty-five years preceding said investment, defaulted for more than one hundred and twenty days in the payment of any part either of principal or interest of any bond, note, or other evidence of indebtedness, provided that the indebtedness of such city does not exceed the limitations imposed by paragraph (c) of subdivision five of this section if applicable; and provided further that the principal and interest of such obligations are payable in United States funds. No obligations of any such city shall be an authorized investment for savings banks unless such city shall have power to levy taxes on the taxable real property therein or to require a levy thereon by municipalities within its area in either case for the payment of such obligation without limitation of rate or amount. The term "city" as used in this paragraph and in paragraph (d) of subdivision five of this section shall include The Municipality of Metropolitan Toronto and any other similar corporation in Canada, and the power to require a levy by municipalities within its area shall be deemed to be a power to levy taxes within the meaning of such last mentioned paragraph.

(d) Not more than ten per centum of the assets of any savings banks shall be invested in the obligations defined in this subdivision, and not more than two per centum of such assets shall be invested in the obligations of any province, nor more than two per centum of such assets in the obligations of any city, as authorized by this subdivision.

26. Subject to such regulations and restrictions as the banking board finds to be necessary and proper:

(a) Preferred stock of any corporation, created or existing under the laws of the United States or of any state, district or territory thereof, provided (1) the net earnings of such corporation available for its fixed charges for a period of five fiscal years next preceding the date of investment by such savings bank shall have averaged per year not less than one and one-half times the sum of the following, computed as of the date of such investment: its annual fixed charges, if any, its annual maximum contingent interest, if any, and its annual preferred dividend requirements; and (2) during either of the last two years of such period such net earnings shall have been not less than one and one-half times the sum of its fixed charges, contingent interest and preferred dividend requirements for such year. As used in this paragraph (a), the term "dividend requirements" shall be construed to mean cumulative or non-cumulative dividends whether or not paid.

(b) Guaranteed stock of any corporation created or existing under the laws of the United States or of any state, district or territory thereof, provided (1) the net earnings of the guaranteeing corporation available for its fixed charges for a period of five fiscal years next preceding the date of investment by such savings bank shall have averaged per year not less than one and one-half times its annual fixed charges computed as of the time of such investment; and (2) during either of the last two years of such period net earnings shall have been not less than one and one-half times its fixed charges for such year.

(c) Common stock of any corporation created or existing under the laws of the United States or of any state, district or territory thereof, other than those, specified in paragraph (d) hereof, a bank, trust company, national bank, banking corporation or a life insurance company as defined in section one hundred ninety of the insurance law, provided (1) such common stock is registered on a national securities exchange, as provided in an act of congress of the United States, entitled the "Securities Exchange Act of 1934", approved June sixth, nineteen hundred thirty-four, as amended; (2) such corporation shall have paid cash dividends on its common stock in each year for a period of ten fiscal years next

preceding the date of investment by such savings bank and aggregate net earnings available for dividends on the common stock of such corporation for the whole of such period shall have been at least equal to the amount of such dividends paid; and (3) the preferred and guaranteed stocks, if any, of such corporation are eligible for investment under paragraphs (a) and (b), respectively, of this subdivision.

(d) Common stock of any casualty company or any fire insurance company created or existing under the laws of the United States or of any state, district or territory thereof, provided such company (1) has no senior securities outstanding; (2) the company and its insurance subsidiaries have consolidated capital stock, surplus and voluntary reserves of at least thirty million dollars; (3) shall have paid dividends on its common stock in each year for a period of ten fiscal years next preceding the date of investment by such savings bank; and (4) shall have, together with its insurance subsidiaries, in the fiscal year immediately preceding the date of such investment, not more than fifty-five per centum of net premiums written in respect of risks involving loss or damage to property by fire or in respect of liability of owners and operators of motor vehicles for personal injury and property damage.

(e) Stock or shares of any investment company, as defined by, and which is registered under, an act of congress of the United States, entitled the "Investment Company Act of 1940", approved August twenty-second, nineteen hundred forty, as amended, provided (1) all of the stock and shares, other than stock or shares required by law to qualify directors, of such investment company are or are to be owned by savings banks, savings and loan associations, or by savings and loan associations and pension trusts, funds, plans or agreements participated in by one or more savings banks or savings and loan associations to provide retirement benefits, death benefits or disability benefits, and any or all such benefits, for any or all of its or their active officers and employees; (2) such company may invest only in such investments as are eligible for savings banks, including, without limitation, investments made eligible for savings banks by paragraphs (a), (b), (c) and (d) of this subdivision but excluding investments made eligible for savings banks by subdivisions five-a, six, eight, nine, sixteen, seventeen, twenty, twenty-two and twenty-three of this section, provided that (i) investment restrictions based upon the assets, surplus fund, net worth or other features of the condition or operation of the savings bank shall not be applicable to such investment company, and (ii) the amount of stock of any corporation which may be held by such investment company shall not exceed five per centum of the number of shares of stock of such corporation outstanding at the time of investment by such investment company. Nothing contained in the provisions of subdivision four of section one hundred thirty of this chapter shall prevent an officer, director, clerk or other employee of any bank or trust company from being an officer, director or employee of any such investment company.

(ee) Stock of any "bank service corporation", as such term is defined by an act of congress of the United States, entitled the "Bank Service Corporation Act", approved October twenty-third, nineteen hundred sixty-two, as such act may be amended from time to time, provided such investment shall have been authorized by resolution of the banking board upon a three-fifths vote of all its members.

(f) For the purposes of this subdivision, (1) the term "net earnings available for fixed charges" shall mean net income after deducting operating and maintenance expenses, taxes other than federal and state income taxes, depreciation and depletion, but excluding extraordinary non-recurring items of income or expense appearing in the regular financial statements of the issuing, assuming or guaranteeing corporation; provided, however, that in the case of preferred stock, federal and state income taxes also be deducted in determining net earnings available for fixed charges; (2) the term "fixed charges" shall include interest on funded and unfunded debt, amortization of debt discount and rentals for leased properties; (3) if net earnings are determined in reliance upon consolidated earnings statements of parent and subsidiary corporations, such net earnings shall be determined after provision for income taxes of subsidiaries and after proper allowance for minority stock interest, if any, and the required coverage of fixed charges shall be computed on a basis including fixed charges and preferred dividends of subsidiaries other than those payable by such subsidiaries to the parent corporation or to any other of such subsidiaries; and (4) in applying the earnings tests under this subdivision to any issuing, assuming, or guaranteeing corporation, where such corporation shall have acquired its property or any substantial part thereof within the five years immediately preceding the date of in-

vestment by consolidation or merger, or by the purchase of all or a substantial portion of any other corporation or corporations, or shall have acquired the assets of any unincorporated business enterprise by purchase or otherwise, the gross operating income, net earnings and interest charges of the several predecessor or constituent corporations or enterprises shall be consolidated and adjusted so as to ascertain whether or not the applicable requirements of this subdivision, have been complied with.

(g) No investment shall be made by a savings bank pursuant to paragraphs (a), (b), (c) or (d) of this subdivision in the stock of any corporation if the total investment by the savings bank in the stock of such corporation exceeds, or by the making of such investment will exceed, (1) in amount, one per centum of the assets of the savings bank, or (2) in number of shares, two per centum of the total issued and outstanding shares of stock of such corporation.

(h) No investment shall be made by a savings bank pursuant to this subdivision if the total amount so invested by it exceeds, or by the making of such investment will exceed, an amount equal to seven and one half per centum of its assets or an amount equal to seventy-five per centum of its surplus fund, undivided profits and surplus reserves, whichever amount is less.

(i) No investment shall be made by a savings bank pursuant to paragraph (c), (d) or (e) of this subdivision if the total amount invested by it pursuant to such paragraphs exceeds, or by the making of such investment will exceed, an amount equal to five per centum of its assets or an amount equal to fifty per centum of its surplus fund, undivided profits and surplus reserves, whichever amount is less.

(j) Investments authorized by this subdivision shall not be required to be included in any list furnished by the superintendent pursuant to section thirty-five of this chapter.

(k) For the purposes of sections two hundred seventy-four, two hundred eighty-five and four hundred thirty-five of this chapter, investments authorized by this subdivision shall not be deemed investments in which savings banks may legally invest.

(l) For the purposes of any other statutes which restrict investments to securities authorized for investment by savings banks, including but not limited to section ninety-two of the membership corporation law, section 9.27 of the mental hygiene law and sections fifteen and twenty-five-a of the workmen's compensation law, investments authorized by this subdivision, shall not be deemed investments in which savings banks may legally invest.

27. For the purposes of this section the term "state", when used generally to include every state of the United States, includes also the commonwealth of Puerto Rico, and the term "city", when used generally to include cities in every state of the United States, includes also any municipality of the commonwealth of Puerto Rico.

28. Bonds, notes or evidences of indebtedness issued by a corporation organized for the purpose of undertaking, constructing, owning, maintaining, operating, selling or conveying a slum clearance and redevelopment project, located within this state, pursuant to title one of an act of congress of the United States approved July fifteenth, nineteen hundred forty-nine, entitled the "Housing Act of 1949," or organized pursuant to articles five and six of the private housing finance law, and secured by a first mortgage upon all of the real property owned by the corporation. A mortgage loan made under this subdivision may equal but shall in no event exceed ninety per centum of the cost as estimated prior to the completion of the project, or ninety per centum of the total actual final cost, if that shall be greater than the estimated cost, but in no event, shall such mortgage loan exceed ninety per centum of the appraised value of the completed project determined pursuant to subdivision six of this section. The estimated cost and the total actual final cost shall be certified as to reasonableness and correctness by an independent engineering organization and shall include the cost to the corporation of the lands owned by the corporation, the cost of demolition, the cost of constructing the improvements including planning, designing engineering and landscaping, the cost of relocation of tenants, interest and other carrying charges during the period of acquisition and of construction, all other costs necessarily incurred and properly attributable to undertaking, constructing and completing the project, and an allowance for working capital which shall not exceed an amount equal to three per centum of the estimated cost or of the total actual final cost of the project if that shall be greater than the estimated cost. A mortgage loan made under this subdivision may be participated in by one or more savings banks. An

agreement setting forth the manner in which the participating banks shall administer the mortgage and acquire real estate, if any, shall be executed on behalf of each bank by two persons appointed by the board of trustees of such bank. Investments made by any savings bank in mortgage loans pursuant to this subdivision and pursuant to paragraph (h) of subdivision six of this section shall not, in the aggregate, exceed ten per centum of the assets or an amount equal to the surplus fund and undivided profits and surplus reserve of such savings bank, whichever is less, and shall be included in the computation of permissive investment in mortgage loans pursuant to paragraph (d) of subdivision six of this section. Investments in such mortgage loans shall be subject to such regulations and restrictions as the banking board finds to be necessary and proper.

29. Investments which do not qualify under any of the preceding subdivisions of this section, provided that:

(a) No investment shall be made by a savings bank pursuant to this subdivision if the amount of such investment exceeds one per centum of the assets of the savings bank or ten per centum of its net worth, whichever is less, or if the aggregate amount of all such investments by a savings bank exceeds, or by the making of such investment will exceed, two per centum of its assets or twenty per centum of its net worth, whichever is less:

(b) No investment shall be made by a savings bank in the equity securities of any one issuer pursuant to this subdivision if the aggregate amount invested by it pursuant to this subdivision together with the amount invested in the equity securities of such issuer pursuant to any other provision of law exceeds, or by the making of such investment will exceed, one per centum of the assets of the savings bank or ten per centum of its net worth, whichever is less, and no investment shall be made by a savings bank in a loan to, or in the debt securities of, any one issuer pursuant to this subdivision, if the aggregate amount invested by it pursuant to this subdivision together with the amount invested in a loan to, or in the debt securities of, such issuer pursuant to any other provision of law exceeds, or by the making of such investment will exceed, one per centum of the assets of the savings bank or ten per centum of the net worth, whichever is less;

(c) Any loan made or debt security purchased pursuant to this subdivision shall be fully secured over the term of the loan or the security, but no loan shall be made pursuant to this subdivision on the security of personal property having a fair market value less than twenty-five thousand dollars;

(d) This subdivision shall not be deemed to alter any provision of this chapter limiting the aggregate amount which may be invested in any class of loan or investment;

(e) This subdivision shall not be deemed to authorize investment in the common stock of any commercial bank or life insurance company;

(f) For the purposes of this subdivision, "net worth" of a savings bank shall mean the excess of its assets at book value, less allocated reserves, over known liabilities; and

(g) For the purposes of sections two hundred seventy-four, two hundred eighty-five and four hundred thirty-five of this chapter, section three hundred fifty-nine of the general business law, and any other provisions of law which restrict investments to those in which savings banks may legally invest, other than subdivision six of section three hundred seventy-nine of this chapter, investments authorized by this subdivision shall not be deemed investments in which savings banks may legally invest.



## THE GOVERNMENTAL PENSION AND RETIREMENT SYSTEM OF THE STATE OF HAWAII: COVERAGE, FUNDING, FINANCING AND FIDUCIARY STANDARDS

The State of Hawaii has one governmental pension plan currently covering the employees of the State and the counties of the State. This is the "Employees' Retirement System of the State of Hawaii," and the governing laws are contained in title 88 of the Hawaii Revised Statutes, revised in 1969. This report will discuss four aspects of this plan: coverage, funding, financing and fiduciary standards.

For the purpose of this report, coverage means the group of State and local employees who may participate in the plan. The fact that employees may elect not to participate will not be discussed, nor will requirements regarding years of service for participation.

Funding, for the purpose of this report, means the contributions required of both employees and the government. The means of computing such contributions will also be discussed, including actuarial factors used in the applicable statutory provisions.

Financing, for the purpose of this report, means the method by which the government's contributions and payments of benefits may be compelled. Such discussion will include potential for writ of mandamus and the status of the obligation to contribute among other governmental obligations.

Fiduciary standards, for the purpose of this report, means the duties and responsibilities of trustees of the pension plan. The general duties of trustees and fiduciaries, applicable under the law of the State of Hawaii, will also be discussed as it is applicable to the governmental pension trustees. Additional responsibilities and limitations on authority will be highlighted and analyzed.

### I. PROVISIONS OF THE HAWAII STATE CONSTITUTION AFFECTING THE EMPLOYEES' RETIREMENT SYSTEM

The primary provision of the Hawaii State Constitution affecting the operation and rights under the Employees' Retirement System is Article XIV, Section 2, which provides that:

Membership in any employees' retirement system of the State or any political subdivision thereof shall be a contractual relationship, the accrued benefits of which shall not be diminished or impaired.

There have been no cases interpreting this provision, however. Drawing from other similar provisions from other State constitutions, it would appear that employees entitled to pensions under the laws of the State of Hawaii would be secure that their pension benefits and rights could not be diminished during their employment or retirement. See e.g., *Weber v. Levitt*, 41 A.D. 2d 452, 344 N.Y.S. 2d 381 (Sup. Ct., A.D. 1974), affirmed 34 N.Y. 2d 797, 369 N.Y.S. 2d 39, 316 N.E. 2d 327 (Ct. App. 1974).

## II. THE EMPLOYEES' RETIREMENT SYSTEM OF THE STATE OF HAWAII: COVERAGE, FUNDING, FINANCE AND FIDUCIARY STANDARDS

The Employees' Retirement System of the State of Hawaii (System) is set up in corporate form by the Hawaii Revised Statutes. H.R.S. Sec. 88-22. It has the powers and privileges of corporate form, may sue or be sued, and may transact all business, including investment and holding of securities, in its own name. H.R.S. Sec. 88-22. Its general administration is vested in the Board of Trustees (Board), except that they are subject to administrative control of the Department of Budget and Finance. H.R.S. Sec. 88-23.

### *A. Coverage*

Generally, all governmental employees in the State of Hawaii and in political subdivisions thereof are covered by the System. The general pension laws of the State apply to pension plans of "the State or . . . any country . . . board, commission, bureau, department, or other agency thereof." H.R.S. Sec. 88-1. The System itself covers all "employees," which includes:

Any employee or officers of the State or any county, including inspectors, principals, teachers and special teachers, regularly employed in the public schools, cafeteria managers and cafeteria workers, apprentices and on-the-job trainees whether or not supported in whole or in part by any federal grants, members of the legislature and other elective officers, legislative employees who are employed on a full time basis during and between sessions, probationary and provisional employees, per diem employees and others who are made eligible by reason of their employment to membership in the system or by or pursuant to any other provision of law, but excluding:

- (1) per diem employees who elect to withdraw or not to become members . . .
- (2) members of the legislature who do not elect to become members . . .
- (3) persons excluded by rules of the board. . . . H.R.S. Sec. 88-21.

Employees of the counties or the State itself become members in the System. H.R.S. Sec. 88-42. The Board may deny membership to any class of part-time employees or persons engaged in employment on a temporary (less than 3 months) basis. H.R.S. Sec. 88-43.

### *B. Funding*

The Employees' Retirement System of the State of Hawaii is contributory in nature, requiring both employees and the government to contribute toward its funding. Employees contribute six per cent of their contribution annually, in general. H.R.S. Sec. 88-45. Firemen and policemen contribute ten and four-tenths per cent of their compensation, as do corrections officers (after transfer of the county jails). H.R.S. Sec. 88-45. All members also contribute one and eight-tenths per cent of their salaries to the post retirement funds. H.R.S. Sec. 88-45.

The government must contribute toward funding the System. The government contributes enough to fund both a normal cost and an accrued liability contribution, as well as an administrative contribution. The normal cost and accrued liability contributions are determined pursuant to a statutory formula:

- (1) The normal cost for each year after June 30, 1971 shall be the percentage of the aggregate annual compensation of employees as of March 31 of the preceding year which, if contributed over each employee's prospective period of service and added to his prospective contributions, will be sufficient to provide for the payment of all future benefits after subtracting the sum

of the unfunded accrued liability as of the beginning of the year and the assets of the pension accumulation fund as of the end of the preceding year.

(2) The unfunded accrued liability as of July 1, 1971 shall be fixed at \$250,000,000. The accrued liability contribution for each year after June 30, 1971 shall be the level annual payment required to liquidate such unfunded accrued liability over the remainder of the period of fifty years beginning July 1, 1964.

(3) The unfunded accrued liability as of the beginning of a year may, at the discretion of the board, be adjusted to take account of changes in regular interest or such mortality and other tables as are adopted by the board, or to reflect changes in the liability with respect to service rendered in previous years. H.R.S. Sec. 88-122.

The expense contributions are made to the expense fund by the State and counties to pay the administration expenses of the system, and are in an amount equal to that estimated biennially by the Board.

### *C. Financing*

The statutory authorization for appropriations for the annual contributions is phrased in mandatory terms: "Before October 2 in every year the board of trustees shall certify to the governor the appropriation necessary to pay the various funds. . . ." H.R.S. See 88-124. Furthermore, "such amounts shall be included in the general appropriation bill when it is presented to the legislature for final passage." H.R.S. Sec. 88-124. This would appear to bring the inclusion of the pension funds in the appropriation budget submitted to the Legislature within the ambit of a writ of mandamus. Mandamus is available in Hawaii.<sup>1</sup>

A writ of mandamus has been defined as:

A writ issuing from a court of competent jurisdiction, directed to a person, officer, corporation, or inferior court commanding the performance of a particular duty which results from the official station of the one to whom it is directed or from operation of law, or as a writ commanding the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station. It is a proceeding to compel someone to perform some duty which the law imposes upon him, and the writ may prohibit the doing of a thing, as well as command it to be done. The name "mandate" is sometimes substituted for "mandamus" as the formal title of the writ.<sup>2</sup>

The writ of mandamus, therefore, would appear available to compel the Governor to include pension appropriations in his or her budget appropriations request to the Legislature. Furthermore, the payment of benefits to an eligible individual out of the funds of the pension system is termed in mandatory language, and should also be subject to the writ. H.R.S. Sec. 88-76. The actual requirement that the State make contributions, however, is not termed in mandatory language. The determination of the contribution figures are couched in terms of how the fund contributions are measured, not that they are made according to the measurement. See, e.g., H.R.S. Sec. 88-122.

<sup>1</sup> The writ of mandamus was originally provided for by Hawaii Revised Statutes, Sec. 659 *et seq.* However, in 1972 this section was repealed. See L. 1972, c. 90. The repeal consolidated other extraordinary legal writs, including *quo warranto* and *habeas corpus*, into their own provisions and eliminated the statutory delineation of a writ of mandamus. The law provided that the repeal of a statutory provision as to a writ did not signify that the writ was abolished. L. 1972, c. 90, sec. 4. Therefore, mandamus was retained. It is still noted in Hawaii Revised Statutes, section 602-5(4), which states that the Supreme Court of Hawaii has jurisdiction "(t)o exercise original jurisdiction in all questions arising under writs directed to courts of inferior jurisdiction and returnable before the supreme court, or if the supreme court consents to receive the case arising under writs of mandamus directed to public officers to compel them to fulfill the duties of their offices; and such other original jurisdiction as may be expressly conferred by law." Therefore, mandamus still exists in Hawaii.

<sup>2</sup> 55 *Corpus Jurisprudence Secundum*, Mandamus sec. 1 (1948, Supp. 1975).

While there has apparently been no judicial declaration on this point, the contractual basis of the right of a pension participant to his or her benefits under the Hawaii State Constitution might give rise to an action in contract against the State. Such actions against the State for breach of authorized contracts are authorized generally. H.R.S. Sec. 661 *et seq.*

#### *D. Fiduciary standards*

The Board of Trustees are the trustees of the Employees' Retirement System of Hawaii. They are vested with the general power "to hold, purchase, sell, assign, transfer or dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as of the proceeds of the investments. . . ." H.R.S. Sec. 88-110. The custodian of the funds of the System is the State Director of Finance. H.R.S. Sec. 88-111.

There are numerous reports and checks on the activities of these trustees. The annuity savings fund, comprised of the members' accumulated contributions, must issue annual statements to the members showing them their relative contributions. H.R.S. Sec. 88-112. The Board of Trustees is also required to keep a record of all of its meetings and hold the record open to public inspection. It also publishes an annual report showing:

In detail the fiscal transactions of the system for the year ending the preceding June 30, the amount of the accumulated cash and securities of the system and of an actuarial valuation of the assets and liabilities of the system. H.R.S. Sec. 88-103.

The report is submitted to the Governor of the State and the heads of the various departments. There is also requirement for an actuarial investigation into the "experience of the system and . . . valuation of the system" every five years, at least. H.R.S. 88-105.

The investment authority of the Board of Trustees is limited by a list of acceptable securities and investments. The list includes the following:

(1) Real estate loans and mortgages. Obligations (as defined in section 431-286) of any of the following classes:

(a) Obligations secured by mortgages of non-profit corporations desiring to build multi-rental units (ten units or more) subject to control of the government for occupancy by families displaced as a result of government action.

(b) Obligations secured by mortgages insured by the federal housing administration.

(c) Obligations for the repayment of home loans made under the Servicemen's Readjustment Act of 1944 or under Title II of the National Housing Act.

(d) Other obligations secured by first mortgages on unencumbered improved real estate owned in fee simple, provided that the amount of the obligation shall not at the time investment is made therein exceed 75 per cent of the value of the real estate mortgaged to secure it, except that if the obligation is for an amount of \$50,000 or less, the amount of the obligation shall not exceed 80 per cent of the real estate mortgaged to secure it. Real estate shall not be deemed to be encumbered within the meaning of this subparagraph by reason of the existence of any of the restrictions, charges or claims described in section 431-293(a).

(e) Other obligations secured by first mortgages of leasehold interests in improved real estate, provided that (i) each such leasehold interest at such time shall have a current term extending at least two years beyond the stated maturity of the obligation it secures, and (ii) the amount

of the obligation shall not at the time investment is made therein exceed 75 per cent of the value of the respective leasehold interest and improvements, except that if the obligation is for an amount of \$50,000 or less, the amount of the obligation shall not exceed 80 per cent of the value of the respective leasehold interest and improvements.

The board of trustees may retain such real estate (including leasehold interests therein) as it may acquire by foreclosure of mortgages or in enforcement of security, or as may be conveyed to it in satisfaction of debts previously contracted, provided that all such real estate (other than leasehold interests) shall be sold within five years after acquiring the same (subject to extension by the governor for additional periods not exceeding five years each) and all such leasehold interests shall be sold within one year after acquiring the same (subject to extension by the governor for additional periods not exceeding one year each).

(f) Obligations for the repayment of home loans guaranteed by the department of Hawaiian home lands pursuant to section 208 of the Hawaiian Homes Commission Act, 1920.

(2) Government obligations, etc. Obligations of any of the following classes:

(a) Obligations issued or guaranteed as to principal and interest by the United States or by any state thereof, or by the Dominion of Canada or by any province thereof, or by any municipal or political subdivision or school district of any of the foregoing, provided that principal of and interest on such obligations are payable in currency of the United States.

(b) Revenue bonds (whether or not permitted by any other provision hereof) of the State or any municipal or political subdivision thereof (including the board of water supply of the city and county of Honolulu), and street or improvement district bonds of any district or project in the State.

(c) Obligations issued or guaranteed by any federal home loan bank (including consolidated federal home loan bank obligations), the home owner's loan corporation, the federal national mortgage association, or the small business administration.

(3) Corporate obligations. Obligations of any corporation created or existing under the laws of the United States or of any state or district thereof, and qualified under any of the following:

(a) Fixed interest-bearing obligations, if the average annual net earnings of the obligor or guarantor available for its fixed charges for a period of five fiscal years next preceding the date of the investment have equaled at least one hundred and fifty per cent of its average annual fixed charges applicable to the period and if its net earnings for the last year of the period have equaled at least one hundred and fifty per cent of its fixed charges for such year.

(b) Fixed interest-bearing obligations secured by assignment of a lease or leases, or the rentals payable thereunder, of real or personal property (including, without limitation, charters of vessels) to a corporation created or existing under the laws of the United States or of any state or district thereof, provided that (i) the fixed rentals assigned shall be sufficient to repay the principal of and interest on the obligation within the unexpired term of the lease, exclusive of the term which may be provided by any option of renewal, and (ii) the net earnings of the corporation shall meet the requirements described in clause (A) above.

(c) Fixed interest-bearing obligations secured by rights or assignment of rights under a contract (including, without limitation, a contract for the sale of products, materials, supplies or other property, or for the furnishing of transportation or services) with a corporation created or existing under the laws of the United States or of any state or district thereof, provided that (i) the rights securing such obligations shall include the right to receive payments sufficient to repay the principal of and interest on the obligations within the unexpired term of the contract, and (ii) the net earnings of the corporation shall meet the requirements described in clause (A) above.

As used in this subsection, the terms "fixed charges" and "net earnings available for fixed charges" shall have the meanings and application ascribed thereto in sections 431-286 and 431-287.

(4) Preferred and common stocks. Shares of preferred or common stock of any corporation created or existing under the laws of the United States or of any state or district thereof, provided that the book value of the total investment in such stocks shall at no time exceed forty per cent of the total book value for all investments of the system.

(5) Obligations eligible by law for purchase in the open market by federal reserve banks.

(6) Obligations issued or guaranteed by the International Bank for Reconstruction and Development, by the Inter-American Development Bank or by the Asian Development Bank.

(7) Obligations secured by collateral consisting of any of the securities or stock listed above and worth, at the time the investment is made, at least fifteen per cent more than the amount of the respective obligations.

(8) Other securities. Securities and stock in which in the informed opinion of the board of trustees it is prudent to invest funds of the system, whether or not the securities or stock are expressly authorized by or qualify under the foregoing paragraphs, and notwithstanding any limitation of any of the foregoing subsections (including paragraph (4)); provided that the total book value of investments under this paragraph shall at no time exceed ten per cent of the total book value of all investments of the system. H.R.S. Sec. 88-119.

The Board of Trustees, therefore, may invest only in the above listed investments.

The Board of Trustees is composed of the director of finance of the State of Hawaii, ex-officio, three members of the system (two of whom are general employees elected by the membership, and one of whom is a teacher, elected), and three citizens of the State not employees (one of whom is a responsible officer of a bank, appointed by the Governor). The members other than ex-officio members, are elected or appointed for a six year term. H.R.S. Sec. 88-24.

Each trustee must swear an oath to "diligently and honestly administer the affairs of the board of trustees and that they will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the system." H.R.S. Sec. 88-27.

Trustees are prohibited from having certain interests in investments of the funds. The same restrictions apply to employees of the Board:

No trustee and no employee of the board of trustees shall have any direct interest in the gains or profits of an investment made by the board, nor as such receive any pay or emolument for his services. No trustee or employee of the board shall, directly or indirectly, for himself or as an agent in any manner use the moneys of the system, except to make such current and necessary payments as are authorized by the board; nor shall any trustee or employee of the board become an endorser or surety or become in any manner an obligor for moneys loaned by or borrowed from the board. H.R.S. Sec. 88-33.

### III. CONCLUSIONS REGARDING THE EMPLOYEES' RETIREMENT SYSTEM OF THE STATE OF HAWAII

The State of Hawaii has consolidated all pension and retirement plans currently active into one system—the Employees' Retirement System of the State of Hawaii. Other systems are closed at this time. The legislation governing the operation of the System provides for contributions by both members and the government, and provides for actuarial determinations of the employer contributions. The System

is corporate in form and administered by the Board of Trustees, who are subject to substantial restrictions on dealing with the trust funds and on investments. They may be subject to general fiduciary law of the State of Hawaii, but there is no case law on this point and the statutes give them substantially similar rights and duties, including a standard of "diligent and honest" care in administering the funds and restrictions against having interests in the funds. The Hawaii system, while surpassed by certain other States in the security of the financing of employer contributions, would appear near the top of all States with regard to its simplicity.

HOWARD M. ZARITSKY,  
*Legislative Attorney, American Law Division.*



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